



# New York **Makes Work Pay**

Developing a path to employment for New Yorkers with disabilities

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Policy to Practice Brief #12

## **Expedited Reinstatement of Social Security or SSI Disability Benefits**

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## About Policy-to-Practice Briefs

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This document is one of a series of policy to practice briefs published as part of the New York Makes Work Pay initiative, a Comprehensive Employment Services Medicaid Infra-structure Grant funded by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) to the New York State Office of Mental Health (OMH) and its management partners, the Burton Blatt Institute at Syracuse University and the Employment and Disability Institute (EDI) at Cornell University. The New York Makes Work Pay Initiative provides an array of services to employers and individuals with disabilities and the agencies and advocates that serve them, helping to remove obstacles to work and pave the way to self supporting employment.<sup>1</sup>

The thoughts and opinions expressed in these materials are those of the authors and do not necessarily reflect the viewpoints or official policy positions of the Social Security Administration (SSA), CMS, or OMH. The information, materials and technical assistance are intended solely as information guidance and are neither a determination of legal rights or responsibilities, nor binding on any agency implementation and/or administrative responsibilities.

This publication is based on federal Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) laws, regulations, and policy, with a focus on how those provisions will affect New York State residents with disabilities. Although this is written for a New York audience and will focus on New York's unique SSI rates in examples, all of the SSI-related laws, regulations, and policy discussed are federally based and will play out the same in every state. Therefore, this will be a good resource for readers throughout the country.

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<sup>1</sup> A detailed description of the New York Makes Work Pay Project and its services can be found at <http://www.NYMakesWorkPay.org>.

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## Acronyms and Abbreviations

<b>1619(a)</b>	SSI rule that allows an SSI beneficiary to be eligible for an SSI cash payment when his or her earned income is at the SGA level
<b>1619(b)</b>	SSI rule that allows an SSI beneficiary to remain eligible for Medicaid even if his or her income becomes too high to receive a cash payment
<b>CDR</b>	Continuing Disability Review
<b>CFR</b>	Code of Federal Regulations
<b>EPE</b>	Extended Period of Eligibility
<b>EXR</b>	Expedited Reinstatement of Benefits
<b>FBR</b>	SSI Federal Benefit Rate
<b>IRP</b>	Initial Reinstatement Period
<b>POMS</b>	Social Security Program Operations Manual System
<b>SGA</b>	Substantial gainful activity
<b>SSA</b>	Social Security Administration
<b>SSDI</b>	Social Security Disability Insurance
<b>SSI</b>	Supplemental Security Income
<b>TWWIIA</b>	Ticket to Work and Work Incentives Improvement Act of 1999
<b>TWP</b>	Trial Work Period
<b>USC</b>	United States Code

## I. Introduction

This policy-to-practice brief covers the expedited reinstatement (EXR) provision, introduced into the Social Security Disability Insurance (SSDI)<sup>2</sup> and Supplemental Security Income (SSI) programs in January 2001. While the EXR provisions apply to both SSDI and SSI benefits, their major impact is on SSDI beneficiaries.

The purpose of this policy-to-practice brief is to review the EXR provisions that have now been effective for almost ten years. In doing so, we will make frequent references in the footnotes to SSA's regulations and its Program Operations Manual Systems (POMS)

<sup>2</sup> SSDI is used in this article to reference all Social Security disability programs, including Disability Insurance Benefits, Widow's/Widower's Insurance Benefits, and Child's Insurance Benefits (the latter commonly referred to as either Disabled Adult Child's Benefits or Childhood Disability Benefits). See 42 U.S.C. " 402(d), (e), (f), and 423.

that provide guidance to SSA staff regarding EXR policies and procedures. The final EXR regulations were published in the Federal Register on September 30, 2005 and became effective on October 31, 2005.<sup>3</sup> The POMS EXR provisions, originally published in January 2002, were thoroughly edited and updated in February 2006.<sup>4</sup>

As related to SSDI, the EXR provisions are important because of their relationship to cash benefits status following the TWP, EPE, and loss of benefits status when the individual performs SGA after the EPE. For this reason, we will devote considerable space to explaining the SGA rule, as well as the TWP and EPE rules. As related to SSI, the EXR provisions are important following the loss of SSI and Medicaid eligibility. This usually occurs after an individual has been eligible under the 1619(b) provision and subsequently loses that eligibility. Specifically, the EXR provisions become important in those cases in which the section 1619 rules would not allow the individual to return to cash benefits status following the loss or reduction of wages. For this reason, we will also devote considerable space to explaining SSI budgeting of wages, the 1619(a) provisions, and the 1619(b) provisions.

## **II. Establishing the Context for Expedited Reinstatement in the SSDI Program: The Substantial Gainful Activity, Trial Work Period, and Extended Period of Eligibility Rules**

In the SSDI program, the EXR rights are triggered only after a series of events have occurred and in the following order:

1. The individual has exhausted all rights under the trial work period (TWP);
2. The individual has exhausted all rights under the extended period of eligibility (EPE);
3. The individual has performed substantial gainful activity (SGA) after the EPE, and loses the right to receive SSDI benefits on that basis; and
4. The individual either stops working or has a loss of earnings reducing monthly wages below the SGA level.

Thus, an understanding of the EXR provisions, in the SSDI context, is dependent on understanding the concept of SGA and how the TWP and EPE rules operate.

<sup>3</sup> 70 Federal Register 57132 - 57146 (Sept. 30, 2005), adding 20 C.F.R. " 404.1592b through 404.1592f, and adding 20 C.F.R. " 416.999 through 416.999d.

<sup>4</sup> See POMS DI 13050.001 et seq. and DI 28057.001 et seq.

## A. The Substantial Gainful Activity Rule

For persons who are not legally blind, the general rule is that average earnings of more than \$1000 per month amount to SGA in 2010.<sup>5</sup> Absent application of one of the work incentive rules, including the TWP and EPE rules discussed below, a person averaging more than \$1000 per month would be denied SSDI or SSI as an applicant, or SSDI would be terminated if already receiving benefits. For the SSDI applicant or beneficiary who meets SSA's blindness standard, monthly earnings of more than \$1,640 are considered to be SGA in 2010.<sup>6</sup> Both the non-blind and blind SGA amounts are subject to yearly increases based on the National Wage Index.<sup>7</sup> There is no SGA rule for the blind in the SSI program, nor does SGA apply to continuing SSI entitlement for disabilities other than blindness.<sup>8</sup>

This article will not elaborate further on the SGA rule except as it relates to the application of the EXR provisions. We will not discuss the many ways in which countable wages can be reduced using impairment related work expenses or subsidies, for example, when measuring wages against the SGA amount for the year in question. Readers should keep in mind, however, that in the day-to-day work of a benefits specialist, all of these issues will be relevant.<sup>9</sup>

## B. The Trial Work Period

The TWP is any nine service months, within a rolling 60-month period, during which SSDI beneficiaries may test their ability to work, without losing benefits.<sup>10</sup> A TWP service month for 2010 is a month in which the beneficiary earns more than \$720 or works more than 80 self-employed hours. During the TWP, the SGA rule will not apply. The beneficiary can keep both paycheck and disability check, no matter how high the paycheck is, as long as the beneficiary continues to have a disabling impairment and the work activity has been reported. The nine service months of the trial work period need not be consecutive.

The work itself, when performed during the TWP, cannot be used to show medical improvement.<sup>11</sup> Effective January 1, 2002, the work activity of an SSDI beneficiary, who has

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<sup>5</sup> 20 C.F.R. ' 404.1574, 416.974; POMS DI 10501.000 et seq; DI 10501.015B. For self-employed persons, see 20 C.F.R. " 404.1575, 416.975; POMS DI 10510.001 et seq.

<sup>6</sup> 20 C.F.R. ' 404.1584(d); POMS DI 10501.015 C.

<sup>7</sup> 20 C.F.R. " 404.1574(b)(2)(i) & (ii), 404.1584(d)(3), 416.974(b)(2)(i) & (ii).

<sup>8</sup> 20 C.F.R. ' 416.984.

<sup>9</sup> For more information on the various work incentives available, please refer to our 2 P to Ps on SSDI work incentives & SSI work incentives. Found at <http://www.nymakesworkpay.org>

<sup>10</sup> 42 U.S.C. ' 422(c); 20 C.F.R. ' 404.1592; POMS DI 13010.035 et seq. See 20 C.F.R. ' 404.1585, concerning the trial work period for persons age 55 or older.

<sup>11</sup> 20 C.F.R. ' 404.1592(a).

received benefits for at least 24 months, cannot be used as evidence that the person is no longer disabled even if the work occurs after the TWP.<sup>12</sup>

The nine months of the trial work period need not be consecutive. Any month in which the person earns at least \$720 in 2010 will be a TWP month. For self-employed individuals, a TWP month in 2010 is a month with either net earnings of more than \$720 or more than 80 work hours, regardless of the amount of earnings.<sup>13</sup> For these individuals, the future TWP amount will be either net earnings based on the TWP amount or work in the business of more than 80 hours per month.<sup>14</sup>

The TWP will be computed under a 60-month rolling period.<sup>15</sup> When a person works enough to be credited with 9 TWP service months, SSA will count back 60 months (including the present month) to see if nine TWP service months have been worked during that period. If not, SSA will wait until the next TWP service month is worked to see if nine TWP service months were completed during the rolling 60-month period. Once the TWP is completed, the individual will begin a new phase, the extended period of eligibility (EPE), as discussed in the next section.

An SSDI beneficiary is allowed one trial work period during a period of entitlement to disability cash benefits.<sup>16</sup> The rules allow more than nine TWP months so long as the person does not have nine within any period of 60 consecutive months. However, once the person works nine TWP months within a 60-month period, the TWP is completed and a second TWP will not be allowed during that period of entitlement. Effective January 1, 2001, the new expedited reinstatement rules allow for a new TWP after the person receives 24 benefits checks during the initial reinstatement period.<sup>17</sup>

This example illustrates how the trial work period rules operate:

**Example.** Mary began collecting SSDI benefits in 2002. She worked two TWP months in January and February 2004; worked four TWP months in April through July 2008; and worked three more in October through December 2009.

Mary has not used up her TWP. As of July 2008, she had worked six TWP months. When she works again in October 2009, we look to see if she now has worked nine TWP months

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<sup>12</sup> Ticket to Work and Work Incentives Improvement Act of 1999, ' 111, 42 U.S.C. ' 421(m)(1). See SSA's Notice of Proposed Rulemaking, published October 11, 2005, that would implement this provision through regulation, 70 Federal Register 58999-59015.

<sup>13</sup> SSA will annually index the amount needed for a TWP month based on the National Wage Index. 20 C.F.R. ' 404.1592(b)(1).

<sup>14</sup> 20 C.F.R. ' 404.1592(b)(2).

<sup>15</sup> 42 U.S.C. ' 422(c).

<sup>16</sup> 20 C.F.R. ' 404.1592(c).

<sup>17</sup> See parts III and IV, below.

within a consecutive 60-month period ending October 2009 (i.e., November 2004 through October 2009). Since the only other TWP months in that period are the four she worked in 2008, October 2009 is her fifth TWP month. After working in November and December 2009, Mary has used up seven TWP months (within the 60-month rolling period) and would have two months left.

What if Mary doesn't work again until late 2010 and then works trial work months in November and December 2010? Now Mary has worked nine TWP months within a 60-month period and her TWP will be completed.

**Table I: Mary's TWP within the rolling 60-month period**

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2004	TWP Month	TWP Month	---	---	---	---	---	---	---	---	---	---
2005	---	---	---	---	---	---	---	---	---	---	---	---
2006	---	---	---	---	---	---	---	---	---	---	---	---
2007	---	---	---	---	---	---	---	---	---	---	---	---
2008	---	---	---	TWP Month	TWP Month	TWP Month	TWP Month	---	---	---	---	---
2009	---	---	---	---	---	---	---	---	---	TWP Month	TWP Month	TWP Month
2010	---	---	---	---	---	---	---	---	---	---	TWP Month	TWP Month

**Comments:**

\* Sixth TWP month within 60-month period ending 7/08 (i.e., 8/03-7/08). TWP continues.

\*\* A 9th TWP month, but only 7th TWP month within 60-month period ending 12/09 (i.e., 1/05-12/09). TWP continues.

\*\*\* The 9th TWP month within 60-month period ending 12/05 (i.e., 1/06-12/10). TWP is completed.

**C. The Extended Period of Eligibility**

The 36-month extended period of eligibility (EPE), or re-entitlement period, allows the person whose SSDI cash payments have stopped because of SGA-level earnings to have their SSDI payments start again if their earnings fall below the SGA level.<sup>18</sup> The 36 months run consecutively, immediately following the completion of the TWP, whether or not the person is performing SGA at the time.

<sup>18</sup> 20 C.F.R. ' 404.1592a; POMS DI 13010.210 et seq.

The first month of SGA during the EPE is called the cessation month. The person will be eligible for SSDI benefits for that month and the following two months. This is true whether the month of SGA is the first month of the EPE, some later month of that 36-month EPE period, or after the 36-month EPE period. This three-month period of continued SSDI eligibility is often referred to as the 'grace period'. Thereafter, during the remainder of the EPE, the person will not receive SSDI benefits for any month in which he or she performs SGA; and will receive SSDI benefits for any month in which he or she does not perform SGA (i.e., earns \$1000 or less in 2010).

This example illustrates how the extended period of eligibility rules operate.

**Example.** Mary, from the TWP example, above, worked her ninth TWP service month in December 2010. This means her 36-month EPE will begin in January 2011 and run through December 2013. Throughout 2011 and 2012, Mary earns \$1,200 gross each month, which we assume will be more than the new SGA levels for each of those years.<sup>19</sup> She stops working in January 2013 following a flare up in her emotional disability and does not work during February and March 2013 as well. She returns to work in April 2013 and earns \$1,200 gross through the remainder of 2013 and through all of 2014.

Since Mary earned more than the SGA amount during all but three months of this 36-month EPE, there will be no SSDI payment due for 30 out of the 36 EPE months. As noted above, the first time an individual performs SGA following the TWP (i.e., during the extended period of eligibility), he or she will be eligible for three more months of benefits, including the "cessation month" plus two additional months (i.e., the "three-month grace period"). In Mary's case, these happen to be the first three months of the extended period of eligibility. The three months of her EPE during which she has no wages, (i.e., January, February, and March 2013), Mary will also be entitled to an SSDI payment.

**Table 2: Mary's 36-month extended period of eligibility**

Year 2011	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>Countable Earnings</b>	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,000	\$1,200
<b>Benefits Status</b>	EPE Grace* Paid	EPE Grace Paid	EPE Grace Paid	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI

<sup>19</sup> We will continue to use the 2010 substantial gainful activity and trial work month amounts in the examples for all future years.

Year 2012	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Countable Earnings	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200
Benefits Status	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI

Year 2013	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Countable Earnings	\$0	\$0	\$0	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200
Benefits Status	EPE** Paid Again	EPE Paid Again	EPE Paid Again	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE No SSDI	EPE*** No SSDI

**Comments:**

\*January 2011 is the cessation month, (i.e., Mary’s first month of SGA within the EPE). She gets SSDI benefits for that month and the two following months (her three-month grace period).

\*\*When Mary’s monthly earnings go below the SGA level during the EPE (i.e., in the months of January, February, and March 2013), she will get an SSDI payment for each month.

\*\*\*December 2013 is the last month of Mary’s EPE.

### III. Expedited Reinstatement: General Comments

An individual who is requesting EXR is often in dire straits. This individual is a candidate for EXR because he or she has either stopped working or has experienced a significant loss in monthly wages that brings their earnings below the SGA level. At the same time, having experienced a termination of SSDI or SSI during the past five years, the individual is not currently receiving cash benefits and cannot be automatically restored to cash benefits simply based on reduced earnings. SSA policy has recognized these factors, having stated in its policy that EXR cases should be expedited through all levels of the adjudication process,<sup>20</sup> and authorizes the use of critical case procedures to expedite the payment of SSDI or SSI benefits for individuals requesting EXR who are in dire need.<sup>21</sup>

The EXR provisions apply to both SSDI and SSI, with their impact most dramatic in the SSDI program. Although many of the rules governing EXR are the same for both SSDI and SSI, numerous differences exist. Therefore, the application of the EXR provisions will be discussed separately for each program.

<sup>20</sup> POMS DI 13050.100 B.

<sup>21</sup> POMS DI 13050.100 C.

## IV. Expedited Reinstatement of SSDI

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Although the discussion in this section will be limited to the EXR provisions as applied to SSDI, for those provisions where the SSDI and SSI rules are identical we will reference both sets of regulations in the footnotes.

### A. The Five-Part Criteria for Reinstatement of SSDI

A person who performs SGA after the EPE will have his or her SSDI benefits terminated due to work activity.<sup>22</sup> Before the EXR provisions became effective in 2001, if the person later lost a job or had wages reduced below the SGA level, he or she would have to file a new application for disability benefits. This prospect of a new application, with the uncertainty of whether a new decision maker would find the person disabled, made many beneficiaries hesitant to attempt a return to work. The expedited reinstatement (EXR) provisions, which became effective January 2001, have allowed more SSDI beneficiaries to try working, knowing they may reestablish eligibility if they later stop working or cease performing SGA for any number of reasons.

These provisions protect a person who performs SGA after the EPE and later has wages reduced below the SGA level. The EXR provisions allow SSDI to be reinstated, without a new application, if the person:

- a. Had his or her previous entitlement to SSDI benefits terminated due to earnings from work;
- b. Is no longer performing SGA;
- c. Has an impairment that is the same as, or related to, the impairment(s) that formed the basis for the original claim;
- d. Requests EXR within five years from the month SSDI benefits were terminated, or has good cause for filing a request later than five years; and
- e. Is determined to be disabled under the Medical Improvement Review Standards (MIRS).<sup>23</sup>

If a person believes he or she meets these criteria, the person should contact SSA to request expedited reinstatement. SSA has issued policy instructions, in its POMS manual, outlining the expedited reinstatement criteria and procedures to be followed by local offices.<sup>24</sup> The instructions also include an expedited reinstatement request form.<sup>25</sup>

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<sup>22</sup> SSA's notice at this juncture will often state that the individual is no longer disabled but that is simply an in-artful way of saying that their benefits are being terminated due to countable earnings above the SGA level after the EPE.

<sup>23</sup> Ticket to Work and Work Incentives Improvement Act of 1999, ' 112, 42 U.S.C. ' 423(I); 20 C.F.R. ' 404.1592c; POMS DI 28057.001 B.

<sup>24</sup> POMS DI 13050.001 et seq., DI 28057.001 et seq.

<sup>25</sup> POMS DI 13050.105, DI 28057.001.

If the beneficiary satisfies the EXR criteria, both his and her benefits and the benefits of dependents (often called auxiliaries) can be reinstated. Dependent's benefits, including benefits for children, spouses, and parents, can be reinstated if a dependent satisfies all eligibility criteria as a dependent (this includes having a new medical determination if the dependent's entitlement is based on being disabled). Both previously entitled dependents and new dependents will have to file the appropriate request form to qualify for reinstated benefits.<sup>26</sup>

## **B. Additional Discussion of Selected EXR Eligibility Criteria for SSDI**

### **1. The 60-Month Period for Requesting EXR Begins Either Following the Last Month of the EPE, or the Last Month That SSDI Benefits Were Paid Following the EPE.**

Regulations require that the EXR request must be in writing and be received by SSA within the consecutive 60-month period that begins in the month in which the beneficiary's SSDI entitlement terminated due to substantial gainful activity.<sup>27</sup> However, an individual may be able to request EXR after the 60-month period if they can show that there was good cause for making a late request.<sup>28</sup>

The 'entitlement termination month,' triggering the beginning of the 60-month period for requesting EXR is either: the first month following the end of the 36-month extended period of eligibility (EPE), if the individual is no longer eligible for SSDI in that month due to performance of SGA; or, if the individual was not performing SGA as their 36-month EPE ended, the first month after the EPE that the individual was no longer eligible for SSDI because he or she performed SGA.

The two different ways of determining the entitlement termination month are best illustrated by two examples.

**Example 1.** Let's return to Mary from the earlier examples. Her EPE ended in December 2013 and she was earning \$1,200 per month or well above the SGA level as her EPE ended, continuing to earn at that level into 2014.

In this example, Mary's entitlement termination month is January 2014, meaning that her 60-month time limit for requesting EXR begins that month and runs through December 2018.

**Example 2.** Jerome used up his nine-month trial work period in September 2006. Although he continued working throughout 2007, 2008, and 2009,

<sup>26</sup> 20 C.F.R. ' 404.1592c(b), POMS DI 28057.001 B.4.

<sup>27</sup> 20 C.F.R. ' 404.1592d(d)(1).

<sup>28</sup> POMS DI 13050.010 A; GN 03101.020 and SI 04005.015.

he never earned more than \$750 gross in any one month during that period. He first began earning at the SGA level in April 2010 when he got a promotion and began earning \$1,200 per month.

In this example, Jerome's TWP ended in September 2006 and his 36-month EPE ended in September 2009. Since he was not performing SGA at that time his benefits continued. When he first performs SGA in April 2010, he is eligible for SSDI for that month and two more months (i.e., his three-month grace period). Jerome's first month of ineligibility for SSDI, (i.e., his entitlement termination month), is July 2010 meaning that his 60-month period for requesting EXR runs through June 2015.

## **2. The Regulations Eliminate the Requirement That the Reduction in Earnings Must be Related to the Individual's Disability.**

The EXR regulations state that the individual must be unable to perform SGA when they request EXR. To satisfy these criteria, the individual must meet the medical test of disability using SSA's Medical Improvement Review Standard (MIRS).<sup>29</sup> This means that the individual must only have stopped performing SGA and must state that their impairment(s) prevents them from performing SGA. An individual must not perform SGA in the month they request EXR. If their work is at the SGA level or above in the month they make their EXR request, the request will be denied.

Please note that at first reading, the requirement that the individual state that they cannot perform SGA because of their impairment(s) may seem to discourage a quick return to SGA-level work. However, the EXR rules only require a finding of medical disability under the medical improvement review standard and, in some cases, allow SSDI payments to continue after a return to SGA-level work under rules discussed below.

## **3. The Impairment(s) Must Be the Same As, or Related to the Impairment(s) That Was the Basis for the Original Claim.<sup>30</sup>**

Most individuals will have no problem meeting these criteria, as the disability that served as the basis for their original claim is a continuing condition. The following example illustrates how this provision might be applied to deny an EXR request.

**Example.** Lisa was approved for SSDI benefits based on a severe seizure disorder. Based on a change in medication, Lisa's seizures have drastically reduced in frequency and she has been able to work at the SGA level and has completed her TWP and EPE and subsequently had her benefits terminated for SGA-level work in October 2007.

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<sup>29</sup> See 20 C.F.R. § 404.1592b.

<sup>30</sup> POMS DI 28057.015 C.

In late 2007, Lisa was diagnosed with multiple sclerosis (MS). As her MS symptoms worsened, Lisa found it increasingly difficult to work. In January 2010, Lisa stops performing SGA due to the worsening of her MS symptoms. She contacts SSA to see if she is eligible to apply for EXR.

Although Lisa's application for EXR is timely (i.e., within 60 months of her entitlement termination month), she does not meet the eligibility criteria for EXR because her current impairment is not the same as, or related to the impairment that formed the basis for her previous entitlement. Under the facts presented, Lisa should not file for EXR, but she can file a new application for disability benefits, based on the multiple sclerosis diagnosis.

#### **4. The Disability Must Render the Individual Incapable of SGA Based on the Application of the Medical Improvement Review Standard (MIRS).**

This provision is important because the MIRS criteria are not as stringent as the medical criteria used to make an initial disability decision.<sup>31</sup> The individual does not need to satisfy a new SSA decision maker that their condition meets the SSDI disability standard.

### **C. Provisional Benefits While EXR Decision is Made**

An individual who requests EXR can receive up to six months of provisional benefits while SSA makes the EXR medical decision.<sup>32</sup> If the individual elects to receive provisional benefits, they are payable beginning the month the individual files the EXR request.<sup>33</sup> The person may also be eligible for Medicare while receiving provisional benefits. Performing SGA, however, will terminate provisional benefits. What happens if SSA pays provisional benefits and later determines the person was not entitled to reinstatement? Must the person repay the provisional benefits? The answer is generally no. Any resulting overpayment cannot be recovered unless SSA determines that the person knew or should have known he or she did not meet the EXR criteria.<sup>34</sup> Even if the individual has an outstanding overpayment of SSDI or SSI benefits from an earlier period, SSA will not recover the overpayment from the provisional benefits unless the individual gives SSA permission to do so.<sup>35</sup>

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<sup>31</sup> POMS DI 28057.015. For more detail on how the medical improvement standard is applied, see, Medical Continuing Disability Reviews and Related Concepts: A Discussion of Medical CDRs and the Age 18 Redetermination, [http://www.ilr.cornell.edu/ped/dep/PP\\_11.txt](http://www.ilr.cornell.edu/ped/dep/PP_11.txt) or pdf.

<sup>32</sup> 42 U.S.C. ' 423(i)(7); 20 C.F.R. ' 404.1592e; POMS DI 13050.025.

<sup>33</sup> 20 C.F.R. ' 404.1592e(a)(1); POMS DI 13050.025 C.

<sup>34</sup> 42 U.S.C. ' 423(i)(7)(D), 20 C.F.R. ' 404.1592e(h); POMS DI 13050.080 A.1.a.

<sup>35</sup> 20 C.F.R. ' 404.1592e(g).

## D. Effective Month of SSDI Reinstatement

Many former SSDI beneficiaries will not immediately file an EXR request in the month they stop performing SGA. This may be because they expect to go right back to work or it may be because they are not aware of the EXR provisions. The good news is that expedited benefits may be awarded retroactively, up to 12 months prior to the date of the EXR request.<sup>36</sup>

**Example.** John was receiving SSDI benefits of \$800 per month. He completed his trial work period in June 2005 and completed his extended period of eligibility in June 2008. His SSDI benefits were terminated in July 2008 because he was performing SGA at that time. John performs SGA throughout the remainder of 2008, then continues performing SGA through June 2009. In July 2009, John's hours are reduced and his gross pay is reduced to \$600 per month. John continues earning at the \$600 level throughout the remainder of 2009. John's disability continues to be the same or related to the disability that was the basis for his original claim, with that disability rendering him unable to perform SGA under the medical improvement review standard.

In January 2010, John is still working at the \$600 level when he attends a benefits seminar and learns about the EXR provisions. That same day he goes to his SSA office and files an EXR request. Provisional benefits are paid beginning with the month of January 2010. Since he meets the criteria, his EXR request is approved in late March 2010 (after John had received provisional benefits in January, February, and March 2010). Can SSA award reinstated benefits retroactively?

In John's case, SSA will award EXR benefits, retroactively, to the earliest month of the 12-month period immediately preceding his EXR request in which he met all the requirements for reinstated benefits. This means that John will have his benefits reinstated as of July 2009, the first month in the 12-month period prior to the EXR request that his earnings level was below SGA. The amount of past due payment will be offset by the provisional benefits John received for January, February and March 2010. Since his reinstated benefit amount will usually be paid at the same level as the last time he received an SSDI check, plus applicable cost of living increases, John can expect to receive a check for about \$4,800 (i.e., six months at \$800 per month).

## E. What if the Request for Reinstatement is Denied?

**The right to appeal.** If the EXR request is denied, an appeal is available to challenge the decision. The appeal process available would be the same as that available for other initial

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<sup>36</sup> 20 C.F.R. ' 404.1592f(a).

determinations made involving SSDI benefits (i.e., reconsideration, administrative hearing, Appeals Council, federal court).<sup>37</sup>

A second EXR request is allowed. Even if an EXR request is denied and not appealed, the final regulations allow a later, second EXR request if it is timely filed (i.e., filed within 60 months of the last month of entitlement). However, if the six months of provisional benefits were paid following the first request, the individual cannot receive provisional benefits when the second EXR request is filed.<sup>38</sup> Notwithstanding, if only three of the six months of provisional benefits were paid during the first request, the individual will be entitled to three provisional benefit months.

A new application for disability benefits can be filed. If an individual requests EXR and is denied, the individual can file a new initial disability application. SSA will use the date that the individual filed for EXR as the date of the new disability application. A determination on the new application will be made using the same criteria used for all new disability applications.

## **F. The 24-Month Initial Reinstatement Period**

This Initial Reinstatement Period (IRP) is important because it triggers the future right to a new TWP, a new EPE, and even a new EXR. This 24-month payment period begins with the first month of payable EXR benefits. The 24 months of payments need not be consecutive, as the beneficiary will not be paid benefits for any month in which he or she performs SGA during this initial period.<sup>39</sup> In this respect, the EXR rules operate very much like the EPE rules, allowing the individual to receive cash benefits for any month in which wages do not exceed the SGA level. If an individual is eligible to receive a monthly payment, but does not receive a payment due to collection of an overpayment, that month will count as a payable month for the IRP. The IRP is completed when the individual has received 24 months of payable EXR payments.

## **G. New Trial Work Period and Extended Period of Eligibility**

For years, SSDI beneficiaries were told they would get one TWP and one EPE, which could be exhausted at very low levels of earnings. This has changed under the new EXR program.

After receiving 24 months of payable EXR benefits, which need not be consecutive (including any months for which provisional and retroactive payments were actually received), the beneficiary gets: a new TWP, a new EPE, and another 60-month period in which to request EXR if benefits are terminated again due to SGA.<sup>40</sup>

<sup>37</sup> 20 C.F.R. ' 404.1592f(g); POMS DI 13050.085C, DI 28057.025.

<sup>38</sup> 20 C.F.R. ' 404.1592e(b).

<sup>39</sup> 20 C.F.R. ' 404.1592f(d).

<sup>40</sup> See 42 U.S.C. ' 423(i)(6), 20 C.F.R. ' 404.1592f(e); POMS DI 13050.035 C.4.

## H. Application of Expedited Reinstatement Rules with Second Trial Work Period and Extended Period of Eligibility

Under the EXR program, a person may be reinstated well after exhausting the TWP and EPE, and even if the person has performed SGA for many months or even years. The following example illustrates this change.

**Example.** Jean performed SGA throughout her TWP and most of her EPE. She completed her ninth TWP service month in December 2010 and completed her EPE in December 2013. She continues to perform SGA, earning \$1,200 monthly in January through December 2014. Since she performed SGA after her EPE, her SSDI benefits were terminated. Jean stops working in early January 2015 because her disability worsens. Her disability is the same or related to the disability that was the basis for her original claim for SSDI and renders her incapable of SGA under SSA's medical improvement criteria.

Jean can apply for reinstatement as early as January 2015, the first month she stopped performing SGA following the termination of her benefits (remember, in order to use the EXR provisions, the termination had to be based on performance of SGA). Since Jean's EXR request is filed within 60 months of the last month she was entitled to benefits - - in this case within 60 months beginning January 2014, or by December 2018 - - her request is clearly a timely one. Based on the facts presented, suggesting that Jean meets all the EXR criteria as of January 2015, she would appear to be eligible for reinstatement effective January 2015.

**Example.** Now let's assume that Jean is awarded reinstated benefits, retroactive to January 2015. She does not work at all during 2015. In January 2016, she returns to work at a fewer number of hours and earns \$500 gross per month throughout 2016. In 2017, she continues to earn at the \$500 level during January, February, and March. Then, in April 2017, she increases her hours dramatically and starts earning \$1,200 gross per month and earns at that level throughout the remainder of 2017. (Again, we will assume for the purpose of this and other examples that the 2010 SGA and TWP amounts will be applied in future years.)

Under the expedited reinstatement rules, Jean will be entitled to SSDI benefits throughout all of 2015 and 2016. Effective January 2017, Jean is eligible for a new TWP as she has 24 payable months to complete the 24-month initial reinstatement period. Once the IRP is completed, Jean is eligible for another TWP and EPE, as described earlier. If Jean completes the TWP and EPE, and subsequently has her benefits terminated due to SGA, she will be eligible to request EXR again, if she stops performing SGA.

In Jean's case, January, February, and March 2017 will not count as TWP months as she is earning less than \$620 per month - - again using the 2010 TWP amount in later years. April 2017, when Jean earns \$1,200 will be her first TWP month. This means Jean is entitled to both her paycheck and her SSDI check for the nine month period, April through

December 2017. Her new extended period of eligibility will start in January 2018 and run through December 2020. Jean will be entitled to SSDI payments during the first three months of the EPE, January through March 2018 (i.e., the benefit cessation month plus the next two months).

**Table 3: How Jean benefits from the expedited reinstatement provisions**

Year 2014	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Countable Earnings	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Benefits Status	Post EPE No SSDI*	Post EPE No SSDI	Post EPE No SSDI	Post EPE No SSDI	Post EPE No SSDI	Post EPE No SSDI	Post EPE No SSDI	Post EPE No SSDI	Post EPE No SSDI	Post EPE No SSDI	Post EPE No SSDI	Post EPE No SSDI

Year 2015	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Countable Earnings	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Benefits Status	EXR** SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid

Year 2016	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Countable Earnings	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500
Benefits Status	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR SSDI Paid	EXR*** SSDI Paid

Year 2017	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Countable Earnings	\$500	\$500	\$500	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200
Benefits Status	Post EXR SSDI Paid	Post EXR SSDI Paid	Post EXR SSDI Paid	TWP SSDI Paid	TWP SSDI Paid	TWP SSDI Paid	TWP SSDI Paid	TWP SSDI Paid	TWP SSDI Paid	TWP SSDI Paid	TWP SSDI Paid	TWP SSDI Paid

**Comments:**

\*January 2014 is Jean’s entitlement termination month and triggers the start of her 60-month time limit for requesting EXR.

\*\*January 2015 is Jean’s first month of SSDI eligibility under the EXR provisions.

\*\*\*December 2016 completes the 24-month Initial Reinstatement Period meaning that Jean will now be entitled to a new trial work period, new extended period of eligibility, and new right to expedited reinstatement.

## I. Choosing to Request EXR versus Filing a New SSDI Application

Deciding whether to seek expedited reinstatement or file a new application can be a complex decision. This section will review some of the factors that go into that decision and the special rights created by the EXR provisions related to those issues.<sup>41</sup>

### 1. The Advantages of EXR over a New Initial Application

**A more streamlined process.** The EXR process requires a fairly short application form that tracks the criteria discussed in this brief. While supporting medical documentation is required, the medical improvement review standard is not as stringent as the medical criteria used to make a determination on a new initial application and the amount of medical evidence will, in most cases, not be as much as that needed to support an initial application. Since all EXR requests are to be handled in an expedited fashion, an EXR decision can be expected to be rendered more quickly than decisions on new applications.

**Provisional benefits.** Nearly all EXR applicants are entitled to provisional benefits of up to six months. Ordinarily, these benefits can be issued within 30 days of the request.

**Immediate eligibility for Medicare.** If not already receiving Medicare, the individual is usually eligible to receive Medicare as part of provisional benefits. Further, if the EXR request is approved, the individual will not have to serve another 24-month waiting period for Medicare.

**No five-month waiting period.** A new application will be subject to all the rules governing new SSDI claims. Ordinarily, if approved, the beneficiary will face a five-month waiting period during which they are not entitled to benefits. By contrast, EXR benefits have no waiting period.

**No Walton-based denial/rescission of benefits if SGA performed within 12 months of disability onset.** Pursuant to the 2002 U.S. Supreme Court decision in *Barnhart v. Walton*,<sup>42</sup> an initial application can be denied or an approval decision rescinded if an individual performs SGA within 12 months of the onset of disability. This is a critical issue for some EXR applicants as many may sporadically perform SGA in the 12 months immediately following their first month of EXR eligibility. On a new application, this sporadic performance of SGA could result in a Walton-based denial or rescission of benefits already granted. By contrast, if an EXR request is filed and approved based on earnings below the SGA level in the initial month of EXR entitlement, performance of SGA during the succeeding 11 months will not result in either a denial or rescission of an EXR approval. Rather, the individual will simply not get SSDI benefits in any month in which SGA is performed.<sup>43</sup>

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<sup>41</sup> See POMS DI 13050.020.

<sup>42</sup> 535 U.S. 212 (2002).

<sup>43</sup> See the following sections of the POMS for a more extensive discussion of these issues: POMS DI 13010.105, 13010.110, 24001.005, 24010.001, and 25505.005.

## 2. Reasons to File a New Application Rather Than an EXR Request

**No 60-month time limit.** An EXR request must be filed within 60 months of the last month of entitlement for benefits. If the individual has missed this deadline, the EXR request will be denied as not timely filed unless SSA finds there is good cause for missing the deadline. A new applicant for SSDI will not face a similar obstacle.

**When the impairment(s) is not the “same as or related to” the original disabling impairment.** The EXR criteria require that the current disability be the same as, or related to, the disability upon which the original claim was granted. By contrast, on a new application SSA will look at all medical conditions that are relevant to the finding of disability, including conditions that were recently diagnosed.

**Immediate trial work period.** If the new SSDI claim is approved and the individual begins working a few months later, a TWP can begin right away (i.e., after the five-month waiting period).<sup>44</sup> By contrast, with an approved EXR request the TWP can only begin after the 24-month Initial Reinstatement Period.

## 3. Other Relevant Issues

**Which path results in the higher SSDI payment?** This will vary from case to case. The EXR rules provide that the SSDI benefit amount will be equal to the prior benefit actually paid plus any cost-of-living increases.<sup>45</sup>

**If a new application is approved, the SSDI benefit amount will be based on a formula that weights more heavily the more recent covered earnings.** Thus, as a very general yardstick, if the old SSDI rate was based on a very substantial earnings record and the more recent earnings record is more modest, the EXR payment rate would be higher. If, on the other hand, the recent earnings record is the more substantial, a new application might result in a higher SSDI payment. Since few individuals will be in a position to figure this out, SSA personnel should be asked to determine which choice would result in the higher payment rate, provide that information to the beneficiary and then allow the beneficiary to decide how to proceed.

**SSA staff are required to assist the individual in making decisions on whether to request EXR or file a new application.** When taking an EXR request, SSA personnel are required to explain the basic provisions of EXR as compared to those of filing an application.<sup>46</sup> This should include a discussion of the issues discussed above, as well as other factors that might help the individual decide which benefit is the most advantageous especially explaining which of the two options would result in the higher payment rate. Remember,

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<sup>44</sup> See comments to the new regulations, 70 Federal Register 57140.

<sup>45</sup> 20 C.F.R. ' 404.1592e(a)(2).

<sup>46</sup> POMS DI 13050.045 B.1. See also, DI 13050.050 B.1, DI 13050.090 A.

that deciding which way to proceed is the decision of the beneficiary.

**Filing an EXR request and a new application.** In most situations, EXR will likely be the most advantageous filing option. A thorough discussion of the various issues that need to be considered when making a filing election should make it clear to the individual what the best option is. However, in some instances an individual is allowed to file a new application and an EXR request simultaneously. However, only one of the two can be processed to completion.<sup>47</sup> More than likely, such an individual would receive the EXR-request decision first, going forward on the new application only if the EXR request is denied. In the unlikely event that both the EXR and initial claim are approved, the individual will have to decide which one should be followed through to completion, and withdraw the other.

**An EXR request can be used as a protective filing date for a new SSDI application.** If the individual files for EXR, including those situations in which SSA treats the initial contact with the agency as the EXR protective filing date, that EXR request (or initial contact with SSA concerning the request) will protect the filing date of the new application if the individual decides not to pursue EXR or if the EXR request is denied.<sup>48</sup>

## **V. Establishing the Context for Expedited Reinstatement in the SSI Program: the 1619(a) and 1619(b) Provisions**

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### **A. Under Section 1619(a), Earnings at the SGA Level Will Never Result in an Automatic Termination of SSI Benefits.**

The section 1619 provisions have been a permanent part of the SSI program since 1987.<sup>49</sup> Section 1619(a) allows SSI beneficiaries to continue receiving benefits when wages are above the SGA amount.<sup>50</sup> Because they are no longer necessary, the trial work period and extended period of eligibility were eliminated from the SSI program in 1987 when the section 1619 provisions became permanent.<sup>51</sup>

When an SSI recipient works, even at wage levels exceeding the SGA amount (i.e., \$1000 per month for the non-blind in 2010), SSA performs a calculation to determine how much will be counted in determining SSI eligibility and payment amount.

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<sup>47</sup> POMS DI 13050.090 A.

<sup>48</sup> POMS DI 13050.015 C.2.d.

<sup>49</sup> Employment Opportunities for Disabled Americans Act, Pub. L. No. 99-643.

<sup>50</sup> 42 U.S.C. ' 1382h.

<sup>51</sup> See POMS SI 02302.001 A.

**Example.** Sam receives \$603 in monthly SSI benefits.<sup>52</sup> Sam goes to work and earns \$985 gross wages per month. He has no other income.

Using the standard SSI income exclusion, Sam’s SSI payment would be calculated as follows:

<b>Step 1</b>	Earned income	\$985
	General income exclusion	- 20
	Earned income exclusion	<u>- 65</u>
		\$900
	Additional 50 % exclusion	<u>- 450</u>
	Counted	\$450
<b>Step 2</b>	20 SSI FBR	\$674
	Minus counted income	<u>- 450</u>
	SSI benefit amount	\$224

In this case, Sam will receive a reduced SSI payment even though his monthly earnings are above the SGA level. As an SSI recipient, he will retain eligibility for Medicaid in 39 states, the District of Columbia, and the Northern Mariana Islands. As Sam’s monthly wages increase, he will lose \$1 in SSI for every \$2 in monthly gross wages.

At \$1,435 in gross monthly wages, Sam’s countable income will be \$675 and his SSI payment will be reduced to \$0. As noted in the next section, however, through the 1619(b) provisions, Sam’s right to receive continued Medicaid will be protected in most cases.

## **B. Under the 1619(b) Provisions, the SSI Recipient Who is No Longer Eligible for an SSI Payment Because of Wages Will Most Often Be Able to Continue Eligibility for Medicaid.**

A detailed explanation of the 1619(b) criteria is beyond the scope of this brief.<sup>53</sup> Section 1619(b) allows an individual to retain SSI recipient status and, therefore, Medicaid

<sup>52</sup> The SSI federal benefit rate for 2010 is \$674 per month. Depending on the state, this may or may not be increased by a state supplement.

<sup>53</sup> To fully explore the requirements for 1619(b) Medicaid, see POMS SI 02302.010 C. (and other sections scattered throughout SI 02302). Found at <http://www.ilr.cornell.edu/edi/nymakesworkpay/m-resources.cfm>

eligibility, when earnings, either alone or in combination with other income become too high to allow an SSI cash payment. Although the core criteria are the same nationwide, eligibility will vary from state to state in two ways:

- For those who live in states in which Medicaid eligibility is not automatic for SSI recipients (i.e., in 209(b) states) to retain Medicaid eligibility, an individual must have been eligible for Medicaid in the month immediately preceding the month payment stopped due to wages.<sup>54</sup>
- The annual earnings limit or threshold for 1619(b) eligibility varies from state to state from a low of \$23,981 in Alabama to a high of \$50,054 in Alaska during 2010.<sup>55</sup> Threshold amounts are adjusted annually. In New York, the threshold is \$43,956.

**Example.** Let's go back to Sam. He lives in New York and starts earning \$1,585 gross per month. His payment stops because his countable income is now \$750 per month ( $\$1,585 - 85 = \$1,500 / 2 = \$750$ ), or well above the \$674 SSI FBR (i.e., the payment rate for his state).

Assuming that Sam meets the other criteria for 1619(b), he should be eligible for continued Medicaid as he has lost SSI due to wages and his annual earned income (\$19,020) is below the threshold for New York. Since 1619(b) is not time limited, Sam could remain on Medicaid indefinitely through 1619(b).

### **C. Since a 1619(b) Beneficiary Retains SSI Recipient Status, an Individual Can Move Back Into SSI Cash Payment Status if Wages Are Significantly Reduced.**

One of the great things about the 1619 provisions is that they allow an individual to readily move from cash benefit status to Medicaid only status, through 1619(b), and back again without the need for either a new application or a request for expedited reinstatement. This makes the EXR provisions less important in the SSI program than they are in the SSDI program.

**Example.** Let's return to Sam again. Sam was getting \$674 in SSI benefits. He began earning \$985, making him eligible for an SSI payment of \$224 per month. He then started making \$1,585 per month, making him ineligible for an SSI payment, but allowing him to retain Medicaid through 1619(b). Some months later, Sam reduces his work hours and is now making \$985 gross per month again.

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<sup>54</sup> See POMS SI 02302.010 D. The 209(b) states include: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia. POMS SI 01715.010.

<sup>55</sup> POMS SI 02302.200 A.

In this example, Sam has moved from regular SSI payment status to 1619(a) status (earnings over SGA) to 1619(b) status (earnings too high for an SSI payment) and then back to 1619(a) status. When his wages are reduced to the \$985 level, he can go right back into payment status with no need for a new application, receiving the same \$224 SSI payment as before. Because Sam, as a 1619(b) recipient, is still treated as receiving an SSI benefit, he can go right back into payment status whenever his wages go low enough.

An SSI recipient will never lose the right to a benefit payment simply because he or she is performing SGA. Furthermore, an individual who does lose cash benefits and moves into 1619(b) status can readily return to cash benefits status when wages decrease. The EXR provision will apply when an individual's eligibility for SSI (1619(b) included) is terminated. This can occur when an SSI recipient's earnings are over the 1619(b) threshold amount for his State. For this reason, the EXR provisions discussed in the next section are not as important in the SSI program as they are in the SSDI program.

## VI. Reinstatement of SSI Benefits

The basic structure for the EXR provisions is the same for both SSDI and SSI. However, the specifics of those provisions within that structure are quite different in the SSI program.

### A. The Five-Part Criteria for Reinstatement of SSI

The EXR provisions allow SSI to be reinstated, without a new application, if:

1. The person was previously eligible for an SSI payment based on disability or blindness;
2. His or her SSI payment was terminated because of earned income or a combination of earned and unearned income;
3. The person requests EXR within five years from the month the SSI benefits were terminated, or has good cause for filing a request later than five years;
4. The person has a disability that is the same as (or related to) the disability that was the basis for their original claim; and
5. That disability renders him or her incapable of SGA based on application of the medical improvement review standard (MIRS).<sup>56</sup>

As we suggested in the SSDI discussion in part IV, above, a person who believes he or she meets these criteria should contact SSA to request reinstatement. If the person satisfies the criteria, both their SSI benefits and the benefits of a previously eligible spouse will be reinstated.<sup>57</sup> With SSI there are no dependent (i.e., auxiliary) benefits, as only the person requesting reinstatement and their eligible spouse can benefit from the EXR provisions as they apply to SSI.

<sup>56</sup> 20 C.F.R. ' 416.999a; POMS DI 28057.001 C.1.

<sup>57</sup> 20 C.F.R. ' 416.999a(b); POMS DI 2057.001 C.1 & 3.

## **B. Additional Discussion of Selected EXR Eligibility Criteria for SSI**

Parts 1, 4, and 5 of the five-part test set forth above are the same as those controlling EXR requests in the SSDI program and will not be separately discussed here.

### **1. The SSI Payment Must Have Been Terminated Because of Earned Income or a Combination of Earned and Unearned Income.**

Under the EXR criteria, SSI eligibility is considered terminated only if the person is no longer eligible for a regular SSI payment, an SSI payment under section 1619(a), or continued Medicaid eligibility under section 1619(b). This termination must also be the result of earned income or a combination of earned and unearned income.

In most cases, an individual who loses the right to an SSI cash payment will remain eligible for Medicaid under 1619(b) as long as gross earned income is under the state's threshold amount. If that individual later stops working, or has earned income that drops to a point where he or she would once again be eligible for an SSI payment, there is no need to use the EXR provision to return to SSI payment status. Since SSA treats 1619(b) as a form of SSI benefit, the individual can transition back to either regular SSI payment status or 1619(a) payment status without the need for either a new application or an EXR request.

On the other hand, if an individual's earnings exceed the state's 1619(b) threshold (i.e., the earnings are sufficient to cover all medical expenses, including those paid through Medicaid), then eligibility for SSI and Medicaid will be terminated. Since this person has experienced a full termination of SSI benefits (i.e., both cash payments and Medicaid), he or she would be eligible for EXR if their earned income is reduced enough to make them once again eligible for an SSI payment.

Individuals in 209(b) states, who lose the right to an SSI payment because of earned income, will not be eligible for Medicaid under 1619(b) if they were not eligible for Medicaid in the month immediately preceding the loss of the SSI payment.<sup>58</sup> Under these circumstances, their eligibility for SSI will be considered terminated if they cease to be eligible for either an SSI payment or 1619(b). Such an individual would be eligible for EXR if their earned income is later reduced enough to make them once again eligible for an SSI payment. In both this and the preceding example, the EXR request would have to be filed within 60 months of the termination of SSI benefits.

Many SSI recipients also receive a form of unearned income, most typically SSDI benefits. When the individual goes to work and earns at a high enough level, the combination of earned income and unearned income will be enough to make the individual ineligible for an SSI payment.

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<sup>58</sup> POMS SI 02302.010 C.

**Example.** Hector, who lives alone, was receiving an SSDI check of \$320 and an SSI check of \$374 in New York State that pays the 2010 SSI federal benefit rate of \$674 plus a supplement of \$87 as he lives alone. Hector goes to work and earns \$1065 in gross wages per month. His combined countable income from unearned income ( $\$320 - 20 = \$300$ ) and earned income ( $\$1065 - 65 = 1000/2 = \$500$ ) will be \$800. Since this is more than the New York State living alone SSI rate of \$761, he will not qualify for an SSI payment.

In this example, the unearned income standing alone would not make Sam ineligible for SSI. However, since the combination of unearned and earned income has made him ineligible for an SSI check, he meets this part of the EXR criteria.

## 2. The 60-Month Period for Requesting EXR Begins Following the Last Month the Person Was Eligible for an SSI Payment.

An individual may request EXR within 60 months of when his or her SSI eligibility was terminated. This is not necessarily the same as when the individual received their last SSI payment, as it could also be the last month of eligibility for 1619(b).

In most cases, an individual who loses SSI payments because of earned income (or combined earned and unearned income) will retain SSI and Medicaid eligibility through the 1619(b) provision. This will later ensure the ability to return to cash benefits status if the wages are reduced (See part V.C). As previously noted, in the cases involving 1619(b) eligibility, the individual will have no need to use the expedited reinstatement process.

In cases where the former SSI recipient loses all eligibility due to earnings, including eligibility for 1619(b), this 60-month period will begin with the month immediately following the month the individual's SSI eligibility was terminated.

## C. Provisional Benefits Pending Expedited Reinstatement Decision

Like the rules governing SSDI, the SSI rules allow up to six months of provisional benefits while the EXR request is pending.<sup>59</sup> With SSI, provisional benefits begin no earlier than the month following the request for reinstatement.<sup>60</sup> Provisional benefits will be calculated using the usual SSI budgeting formula. Provisional benefits can be paid to both the individual and a previously eligible spouse.<sup>61</sup> However, provisional benefits will not include a state supplement.<sup>62</sup>

<sup>59</sup> 20 C.F.R. ' 416.999c(a); POMS DI 13050.030 A.1.

<sup>60</sup> 20 C.F.R. ' 416.999c(a)(1); POMS DI 13050.030 E.1.

<sup>61</sup> 20 C.F.R. ' 416.999c(a)(3) & (4); POMS DI 13050.030 B & D.

<sup>62</sup> 20 C.F.R. ' 416.999c(a)(5); POMS DI 13050.030 B.1.

## D. Effective Month of SSI Reinstatement

If the individual meets the EXR criteria, SSA will begin paying reinstated SSI payments beginning with the month after the month that the EXR request was filed.<sup>63</sup> Unlike the EXR provisions for SSDI, there is no right to retroactive SSI benefits under the EXR provisions. Even if the individual would have been eligible for EXR several months prior to the month of the request, SSI payments will not be available for those months.

An example shows just how critical it is to file the SSI-related EXR request as early as possible.

**Example.** Sam lost his SSI and Medicaid eligibility when he began earning \$2,500 gross per month in January 2006.<sup>64</sup> His SSI and Medicaid were terminated in January 2006.

Sam continued to earn at the \$2,500 level through all of 2006 and through the first six months of 2007. Throughout the entire period, Sam is not eligible for either an SSI payment or for Medicaid under 1619(b). Sam's job ends on June 30, 2007 and he has no earnings during the last six months of 2007.

Assume that throughout this example Sam's disability is the same as or related to the disability that was the basis for his original claim and that he would be found disabled under the medical improvement standard.

Effective July 2007, Sam would meet SSI's criteria for expedited reinstatement and would be eligible for SSI payments through the remainder of 2007 under the EXR criteria. It is critical, however, that Sam request reinstatement as soon as possible because he can only be paid starting the month after his request is filed.

In the perfect world, Sam would request reinstatement as soon as he loses his job - - even as early as late June 2007. If he waits until July 1, 2007 to file his request, his earliest month of EXR entitlement (and earliest month of entitlement to provisional SSI benefits) would be August 2007.

One problem for Sam if he files his EXR request in June 2007 is that he has performed SGA that month by earning \$2,500 in gross wages.<sup>65</sup> The regulations state that in order to qualify for EXR and be found unable to do SGA because of a medical condition, the

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<sup>63</sup> 20 C.F.R. ' 416.999d(a); POMS DI 13050.030 E.1.

<sup>64</sup> We assume that Sam resides in a state in which the 1619(b) threshold is below \$30,000 in annual earnings.

<sup>65</sup> We can certainly assume that \$2,500 will be more than the SGA amount in 2007.

individual must 'not do substantial gainful activity in the month of the EXR request.'<sup>66</sup> Therefore, the earliest Sam can file his request is July 2007, and the earliest he will be eligible to receive an EXR payment is August 2007.

## **E. What if the Request for Reinstatement is Denied?**

All decisions concerning an individual's right to SSI payments under the EXR provisions are considered initial determinations and may be appealed using the normal appeal procedures.<sup>67</sup> By contrast, a denial of the right to provisional benefits is not considered an initial determination and may not be appealed.<sup>68</sup>

## **F. The 24-Month Initial Reinstatement Period**

The 24-month IRP operates a little differently for SSI, as months of 1619(b) eligibility are considered "payable months." Like SSDI, the IRP begins with the month that EXR benefits begin and ends when the individual has had 24 'payable months' of reinstated benefits, in this case SSI benefits. Any month in which the individual receives either an SSI payment or is eligible for 1619(b), Medicaid is considered a payable month. Even if the entire SSI payment is withheld to recover an overpayment for the month, it will still be considered a payable month under this provision.<sup>69</sup>

A New Right to Expedited Reinstatement. Once the individual has had 24 payable months under SSI's EXR provisions (includes both SSI payment months and 1619(b) Medicaid eligibility months), he or she is once again eligible for reinstatement in the future if the EXR criteria are met.<sup>70</sup>

## **G. Choosing to Request Expedited Reinstatement vs. Filing a New SSI Application**

### **1. The Advantages of EXR Over a New Initial Application**

The biggest reasons to choose an EXR request rather than a new SSI application are similar to the reasons one would choose the EXR request over the new application in the SSDI program:

- EXR is a more streamlined process;
- Provisional benefits can be provided while a decision is being made;
- Medicaid can be provided as part of the provisional benefits;

<sup>66</sup> 20 C.F.R. ' 416.999a(c)(2).

<sup>67</sup> 20 C.F.R ' 416.999d(e); POMS DI 13050.085 C.1, DI 28057.025 C.1.

<sup>68</sup> 20 C.F.R. ' 416.999c(f); POMS DI 13050.085 B.1, DI 28057.025 B.

<sup>69</sup> 20 C.F.R. ' 416.999d(c); POMS DI 13050.040 C.2.

<sup>70</sup> 20 C.F.R. ' 416.999d(c).

- Disability will be determined under the medical improvement review standard; and
- There will be no Walton-based denial/rescission of benefits if SGA is performed within 12 months of the disability onset.

The discussion in the SSDI section (See part IV.H) will apply equally to the SSI analysis on these points.

## **2. Reasons to File a New Application Rather Than an EXR Request**

Two of the advantages in the SSDI program for filing a new application rather than an EXR request also exist in the SSI program, namely:

- No 60-month time limit for the new application; and
- The claim can be based on a new disability.

Again, the discussion in the SSDI section (See part IV.H) will apply equally to the SSI analysis on these points. The other advantage mentioned for a new application in the SSDI program - - an immediate trial work period - - will not be present for SSI as there is no TWP in the SSI program. Since the SSI payment rate will always be based on actual earned and unearned income, this will not vary when we compare those filing an EXR request with those filing a new application.

## **VII. Conclusion**

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This policy-to-practice brief has focused on the work incentive known as expedited reinstatement of benefits. We have separately described how the EXR provisions will apply in the SSDI and SSI programs. In order to provide the proper context for how the EXR provisions play out in both programs, we have devoted some space in each section to describing the other key work incentives that will interrelate with the EXR provisions: in the SSDI section, we described the substantial gainful activity rule, the trial work period provisions, and the extended period of eligibility provisions; in the SSI section, we described SSI payment calculation, section 1619(a), and section 1619(b).



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#### **Partnering Organizations**

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Employment and Disability Institute (Cornell University)  
Burton Blatt Institute (Syracuse University)

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