§ 1382h. Benefits for individuals who perform substantial gainful activity despite severe medical impairment

(a) Eligible individuals

(1) Except as provided in section 1383 (j) of this title, any individual who was determined to be an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382 of this title (or a federally administered State supplementary payment) for a month and whose earnings in a subsequent month exceed the amount designated by the Commissioner of Social Security ordinarily to represent substantial gainful activity shall qualify for a monthly benefit under this subsection for such subsequent month (which shall be in lieu of any benefit under section 1382 of this title) equal to an amount determined under section 1382 (b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382 (b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered to be receiving supplemental security income benefits under this subchapter, for so long as—

(A) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability; and

(B) the income of such individual, other than income excluded pursuant to section 1382a (b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382 of this title and such individual meets all other non-disability-related requirements for eligibility for benefits under this subchapter.

(2) The Commissioner of Social Security shall make a determination under paragraph (1)(A) with respect to an individual not later than 12 months after the first month for which the individual qualifies for a benefit under this subsection.

(b) Blind or disabled individuals receiving supplemental security income benefits

(1) Except as provided in section 1383 (j) of this title, for purposes of subchapter XIX of this chapter, any individual who was determined to be a blind or disabled individual eligible to receive a benefit under section 1382 of this title or any federally administered State supplementary payment for a month and who in a subsequent month is ineligible for benefits under this subchapter (and for any federally administered State supplementary payments) because of his or her income shall, nevertheless, be considered to be receiving supplemental security income benefits for such subsequent month provided that the Commissioner of Social Security determines under regulations that—

(A) such individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, meets all non-disability-related requirements for eligibility for benefits under this subchapter;

(B) the income of such individual would not, except for his earnings and increases pursuant to section 415 (i) of this title in the level of monthly insurance benefits to which the individual is entitled under subchapter II of this chapter that occur while such individual is considered to be receiving supplemental security income benefits by reason of this subsection, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382 (b) of this title (if he were otherwise eligible for such payments);

(C) the termination of eligibility for benefits under subchapter XIX of this chapter would seriously inhibit his ability to continue his employment; and
such individual’s earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under this subchapter (including any federally administered State supplementary payments), benefits under subchapter XIX of this chapter, and publicly funded attendant care services (including personal care assistance), which would be available to him in the absence of such earnings.

(2) Determinations made under paragraph (1)(D) shall be based on information and data updated no less frequently than annually.

(A) In determining an individual’s earnings for purposes of paragraph (1)(D), there shall be excluded from such earnings an amount equal to the sum of any amounts which are or would be excluded under clauses (ii) and (iv) of section 1382a (b)(4)(B) of this title (or under clauses (ii) and (iii) of section 1382a (b)(4)(A) of this title) in determining his or her income.

(B) Determinations made under paragraph (1)(D) shall be based on information and data updated no less frequently than annually.

(3) In the case of a State that exercises the option under section 1396a (f) of this title, any individual who—

(A) qualifies for a benefit under subsection (a) of this section, or

(ii) meets the requirements of paragraph (1); and

(B) was eligible for medical assistance under the State plan approved under subchapter XIX of this chapter in the month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such requirements,

shall remain eligible for medical assistance under such plan for so long as the individual qualifies for a benefit under such subsection or meets such requirements.

(c) Continuing disability or blindness reviews; limitation

Subsection (a)(2) of this section and section 1383 (j)(2)(A) of this title shall not be construed, singly or jointly, to require more than 1 determination during any 12-month period with respect to the continuing disability or blindness of an individual.

(d) Information and training programs

The Commissioner of Social Security and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Commissioner of Social Security shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this subchapter and shall conduct such programs for the staffs of the district offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.


Amendments


Subsec. (b)(1)(B). Pub. L. 103–296, § 205(a), inserted “and increases pursuant to section 415 (i) of this title in the level of monthly insurance benefits to which the individual is entitled under subchapter II of this chapter that occur
while such individual is considered to be receiving supplemental security income benefits by reason of this subsection” after “earnings”.


Subsecs. (c), (d). Pub. L. 101–508, § 5039(a), added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Subsec. (a). Pub. L. 99–643, § 4(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Any individual who is an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382 (b) of this title or under this section for the month preceding the month for which eligibility for benefits under this section is now being determined, and who would otherwise be denied benefits by reason of section 1382 (e)(4) of this title or ceases to be an eligible individual (or eligible spouse) because his earnings have demonstrated a capacity to engage in substantial gainful activity, shall nevertheless qualify for a monthly benefit equal to an amount determined under section 1382 (b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382 (b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered a disabled individual receiving supplemental security income benefits under this subchapter, for so long as the Secretary determines that—

“(1) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability, and continues to meet all non-disability-related requirements for eligibility for benefits under this subchapter; and

“(2) the income of such individual, other than income excluded pursuant to section 1382a (b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382 (b) of this title (if he were otherwise eligible for such payments).”

Subsec. (a)(1). Pub. L. 99–643, § 4(c)(2)(A), substituted “Except as provided in section 1383(j) of this section, any individual” for “Any individual”.

Subsec. (b). Pub. L. 99–643, § 4(b)(1)–(4), substituted “meets” for “continues to meet” in former par. (1) and “(including any federally administered State supplementary payments), benefits under subchapter XIX of this chapter, and publicly funded attendant care services (including personal care assistance),” for “and subchapter XIX of this chapter” in former par. (4), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), and substituted introductory provisions of such par. (1) for former undesignated introductory provisions which read as follows: “For purposes of subchapter XIX of this chapter, any individual under age 65 who, for the month preceding the first month in the period to which this subsection applies, received—

“(i) a payment of supplemental security income benefits under section 1382 (b) of this title on the basis of blindness or disability,

“(ii) a supplementary payment under section 1382e of this title or under section 212 of Public Law 93–66 on such basis,

“(iii) a payment of monthly benefits under subsection (a) of this section, or

“(iv) a supplementary payment under section 1382e (c)(3) of this title,

shall be considered to be a blind or disabled individual receiving supplemental security income benefits for so long as the Secretary determines under regulations that—”.

Subsec. (b)(1). Pub. L. 99–643, § 4(c)(2)(B), substituted “Except as provided in section 1383 (j) of this title, for purposes of” for “For purposes of”.


1981—Subsec. (a). Pub. L. 97–35, § 2353(a)(1), substituted in provision preceding par. (1) “subchapter XIX of this chapter” for “subchapters XIX and XX of this chapter”.

Subsec. (b). Pub. L. 97–35, § 2353(a), substituted in provision preceding cl. (i) and in par. (4) “subchapter XIX of this chapter” for “subchapters XIX and XX of this chapter” and in par. (3) “subchapter XIX of this chapter” for “subchapter XIX or XX of this chapter”.
Effective Date of 1994 Amendment

Amendment by section 107(a)(1), (4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 205(b) of Pub. L. 103–296 provided that: “The amendment made by subsection (a) [amending this section] shall apply to eligibility determinations for months after December 1994.”

Effective Date of 1990 Amendment

Section 5032(b) of Pub. L. 101–508 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].”

Section 5039(c) of Pub. L. 101–508 provided that: “The amendments made by this section [amending this section and section 1383 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].”

Effective Date of 1986 Amendment

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Effective Date of 1981 Amendment


Effective Date

Section 201(d) of Pub. L. 96–265, as amended by Pub. L. 98–460, § 14(a), Oct. 9, 1984, 98 Stat. 1808; Pub. L. 99–643, § 2, Nov. 10, 1986, 100 Stat. 3574, provided that: “The amendments made by subsections (a) and (b) [enacting this section and amending section 1382e of this title and provisions set out as a note under section 1382 of this title] shall become effective on January 1, 1981.”

[Section 10(a) of Pub. L. 99–643 provided that: “The amendment made by section 2 [amending section 201(d) of Pub. L. 96–265, set out above] shall become effective on the date of the enactment of this Act [Nov. 10, 1986].”]

Separate Accounts With Respect to Benefits Payable; Evaluation of Program

Section 201(e) of Pub. L. 96–265 provided that: “The Secretary shall provide for separate accounts with respect to the benefits payable by reason of the amendments made by subsections (a) and (b) [enacting this section and amending section 1382e of this title and provisions set out as a note under section 1382 of this title] so as to provide for evaluation of the effects of such amendments on the programs established by titles II, XVI, XIX, and XX of the Social Security Act [subchapters II, XVI, XIX, and XX of this chapter].”