

prosthetic devices, medical services, and similar medically-related items and services, the Board will apply the prevailing charges under Medicare (Part B of the title XVIII, Health Insurance for the Aged and Disabled) to the extent that this information is readily available. Where the Medicare guides are used, the Board will consider the amount that the claimant pays to be reasonable if it is no more than the prevailing charge for the same item or service under the Medicare guidelines. If the amount the claimant actually pays is more than the prevailing charge for the same item under the Medicare guidelines, the Board will deduct from the claimant's earnings the amount the claimant paid to the extent he or she establishes that the amount is consistent with the standard or normal charge for the same or similar item or service in his or her community. For items and services that are not listed in the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which such guides cannot be used because the information is not readily available, the Board will consider the amount the claimant pays to be reasonable if it does not exceed the standard or normal charge for the same or similar item or service in the claimant's community.

(2) Impairment-related work expenses are not deducted in computing the claimant's earnings for purposes of determining whether the claimant's work was "services" as described in § 220.170.

(3) The decision as to whether the claimant performed substantial gainful activity in a case involving impairment-related work expenses for items or services necessary for the claimant to work generally will be based upon the claimant's "earnings" and not on the value of "services" the claimant rendered. (See §§ 220.143 (b)(6)(i) and (ii), and 220.144(a)). This is not necessarily so, however, if the claimant is in a position to control or manipulate his or her earnings.

(4) No deduction will be allowed to the extent that any other source has paid or will pay for an item or service. No deduction will be allowed to the extent that the claimant has been, could

be, or will be reimbursed for payments he or she made. (See paragraph (b)(3) of this section.)

(5) The provisions described in the foregoing paragraphs in this section are effective with respect to expenses incurred on or after December 1, 1980, although expenses incurred after November 1980, as a result of contractual or other arrangements entered into before December 1980, are deductible. For months before December 1980, the Board will deduct impairment-related work expenses from the claimant's earnings only to the extent they exceeded the normal work-related expenses the claimant would have had if the claimant did not have his or her impairment(s). The Board will not deduct expenses, however, for those things with the claimant needed even when he or she was not working.

(g) *Verification.* The Board will verify the claimant's need for items or services for which deductions are claimed, and the amount of the charges for those items or services. The claimant will also be asked to provide proof that he or she paid for the items or services.

Subpart M—Disability Annuity Earnings Restrictions

§ 220.160 How work for a railroad employer affects a disability annuity.

A disability annuity is not payable and the annuity must be returned for any month in which the disabled annuitant works for an employer as defined in part 202 of this chapter.

§ 220.161 How work affects an employee disability annuity.

In addition to the condition in § 220.160, the employee's disability annuity is not payable and the employee must return the annuity payment for any month in which the employee earns more than \$400 (after deduction of impairment-related work expenses) in employment or self-employment of any kind. Any annuity amounts withheld because the annuitant earned over \$400 in a month may be paid after the end of the year, as shown in § 220.164. The \$400 monthly limit no longer applies when the employee becomes 65 years old and the disability annuity is converted to an age annuity. See

§ 220.162

§ 220.145 for the definition of impairment-related work expenses.

§ 220.162 Earnings report.

(a) *General.* Any annuitant receiving an annuity based on disability must report to the Board any work and earnings as described in § 220.160 and § 220.161. The report may be a written or oral statement by the annuitant, or a person acting for the annuitant, made or sent to a representative of the Board. The report should include the name and address of the railroad or non-railroad employer, a description of the work and the amount of gross wages (before deductions) or the net income from self-employment (earnings after deducting business expenses).

(b) *Employee reports.* In addition to the requirement described in (a), a report of earnings over \$400 a month must be made before the employee accepts a disability annuity (the annuity payment is issued and not returned) for the second month after the first month in which earnings are over \$400. Along with the report, the employee must return the annuity payment for any month in which he or she earns over \$400.

§ 220.163 Employee penalty deductions.

If the employee earns over \$400 in a month and does not report it within the time limit shown in § 220.162(b), a penalty is imposed. The penalty deduction for the first failure to report equals the annuity amount for the first month in which the employee earned over \$400. The deduction for a second or later failure to report equals the annuity amount for each month in which the employee earned over \$400 and failed to report it on time.

§ 220.164 Employee end-of-year adjustment.

(a) *General.* After the end of a year, the employee whose annuity was withheld for earnings over \$400 in a month receives a form on which to report his or her earnings for the year.

(b) *Earnings are less than \$5000.* If the employee's yearly earnings are less than \$5000, all annuity payments and penalties withheld during the year because of earnings over \$4800 are paid.

(c) *Earnings are \$5000 or more.* (1) If the employee's yearly earnings are \$5000 or more, the annuity payments are adjusted so that the employee does not have more than one regular deduction for every \$400 of earnings over \$4800. The last \$200 or more of earnings over \$4800 is treated as if it were \$400. If the annuity rate changes during the year, any annuities due at the end of the year are paid first for months in which the annuity rate is higher. Penalty deductions may also apply as described in paragraph (c)(2) of this section.

(2) If the employee's yearly earnings are \$5000 or more and the employee failed to report monthly earnings over \$400 within the time limit described in § 220.162(b), penalty deductions will also apply. If it is the employee's first failure to report, the penalty deduction is equal to one month's annuity. If it is the employee's second or later failure to report, the penalty deduction equals the annuity amount for each month in which the employee earned over \$400 and failed to report it on time.

(d) This section is illustrated by the following examples:

Example 1: Employee is awarded a disability annuity based upon his inability to engage in his regular railroad occupation effective January 1, 1989. During that year, he works April through October, for which he receives \$785 per month. He does not report these earnings to the Board until January of the following year. The employee is considered to have earned \$5600 (7×\$785=\$5495, which is rounded up to the nearest \$400). He forfeits three months of annuities:

$$\left(\frac{\$5600 - \$4800}{\$400} \right) = \begin{matrix} 2 \text{ plus 1 month annuity} \\ \text{penalty for failure} \\ \text{to report} \end{matrix}$$

Example 2: The same employee in the following year also works April through October, for which he receives \$785 per month. This time he reports the earnings on October 31. This year he forfeits 6 months of annuity payments, 2 due to earnings, computed as above, and 4 more due to penalty deductions for failure to report earnings over \$400 for the months April through July. There are no penalty deductions with respect to the months August, September, and October, since the employee reported these earnings prior to accepting an annuity for the second month after the month of earnings in excess of \$400.