

**§416.1261**

**20 CFR Ch. III (4-1-01 Edition)**

(1) Has, since December 1973, resided continuously in the State under whose plan he was eligible for the month of December 1973; and

(2) Has not, since December 1973, been ineligible for an SSI benefit for a period exceeding 6 consecutive months. An SSI benefit means a Federal benefit only; it does not include any State supplementation.

(b) For purposes of this section, an individual will cease to reside continuously in a State if he leaves the State with the present intention to abandon his home there. In the absence of evidence to the contrary,

(1) If an individual leaves the State for a period of 90 calendar days or less, his absence from the State will be considered temporary and he will be considered to continue to reside in such State; and

(2) If an individual leaves the State for a period in excess of 90 calendar days, he will no longer be considered to reside continuously in such State.

(c) *State plan; defined.* As used in this subpart, *an approved State plan as in effect in October 1972* and *State plan for October 1972* means a State plan as approved under the provisions of 45 CFR Ch. II as in effect in October 1972.

[41 FR 47424, Oct. 29, 1976, as amended at 52 FR 29841, Aug. 12, 1987]

**§416.1261 Application of special resource provision.**

In determining the resources of an individual (and spouse, if any) who meets the conditions specified in §416.1260(a), either the State plan resource limit and exclusions (as specified in §416.1260) or the resource limit (as specified in §416.1205) and exclusions (as specified in §416.1210), whichever is most advantageous to the individual (and spouse, if any) will be used.

**§416.1262 Special resource provision applicable in cases involving essential persons.**

(a) *Essential persons continuously meet criteria of eligibility.* In determining the resources of an individual (and spouse, if any) who meet the conditions specified in §416.1260 and whose payment standard is increased because such individual has in his home an essential person (as defined in §416.222), either

the State plan resource limit and exclusions (as specified in §416.1260) applicable to cases in which the needs of an essential person are taken into account in determining the individual's needs, or the resource limit as specified in §416.1205 and exclusions as specified in §416.1210, whichever is most advantageous to the individual (and spouse), will be used.

(b) *Essential person fails to meet criteria of eligibility.* If for any month after December 1973 a person fails to meet the criteria for an essential person as specified in §416.222, in determining the resources of an individual (and spouse, if any) either the State plan resource limit and criteria as specified in §416.1260 applicable to the individual or individual and spouse, as the case may be, or the resource limit as specified in §416.1205 and exclusions as specified in §416.1210, whichever is most advantageous to the individual (and spouse), will be used.

[39 FR 33797, Sept. 20, 1974, as amended at 51 FR 10616, Mar. 28, 1986]

**§416.1264 Spouse ineligible under a State plan in December 1973.**

In the case of an individual who meets the conditions specified in §416.1260 but whose spouse does not meet such conditions, whichever of the following is most advantageous for the individual (and spouse, if any) will be applied:

(a) The resource limitation and exclusions for an individual as in effect under the approved State plan for October 1972, or

(b) The resource limitation (as specified in §416.1205) and exclusions (as specified in §416.1210) for an individual and eligible spouse or an individual living with an ineligible spouse.

**§416.1266 Individual under special resource provision dies after December 1973.**

Where only one person, either the eligible individual or the eligible spouse, meets the conditions specified in §416.1260 and that person dies after December 1973, the State plan resource limitation and exclusions will not be applied to determine the amount of resources of the surviving individual. The resource limitation (as specified in

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§ 416.1205) and exclusions (as specified in § 416.1210) will be applied for the now eligible individual beginning with the month such person is considered the eligible individual as defined in subpart A of this part.

### Subpart M—Suspensions and Terminations

**AUTHORITY:** Secs. 702(a)(5), 1129A, 1611–1615, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382–1382d, 1382h, 1383 and 1320a–8a).

**SOURCE:** 40 FR 1510, Jan. 8, 1975, unless otherwise noted.

#### § 416.1321 Suspensions; general.

(a) *When suspension is proper.* Suspension of benefit payments is required when a recipient is alive but no longer meets the requirements of eligibility under title XVI of the Act (see subpart B of this part) and termination in accordance with §§ 416.1331 through 416.1335 does not apply. (This subpart does not cover suspension of payments for administrative reasons, as, for example, when mail is returned as undeliverable by the Postal Service and the Administration does not have a valid mailing address for a recipient or when the representative payee dies and a search is underway for a substitute representative payee.)

(b) *Effect of suspension.* (1) When payments are correctly suspended due to the ineligibility of a recipient, payments shall not be resumed until the individual again meets all requirements for eligibility except the filing of a new application. Such recipient, upon requesting reinstatement, shall be required to submit such evidence as may be necessary (except evidence of age, disability, or blindness) to establish that he or she again meets all requirements for eligibility under this part. Payments to such recipient shall be reinstated effective with the first day such recipient meets all requirements for eligibility except the filing of a new application.

(2) A month of ineligibility for purposes of determining when to prorate the SSI benefit payment for a subsequent month, is a month for which the individual is ineligible for any Federal

SSI benefit and any federally administered State supplementation.

(c) *Actions which are not suspensions.* Payments are not “suspended,” but the claim is disallowed, when it is found that:

(1) The claimant was notified in accordance with § 416.210(c) at or about the time he filed application and before he received payment of a benefit that he should file a claim for a payment of the type discussed in § 416.1330 and such claimant has failed, without good cause (see § 416.210(e)(2)), to take all appropriate steps within 30 days after receipt of such notice to file and prosecute an application for such payment;

(2) Upon initial application, payment of benefits was conditioned upon disposal of specified resources which exceeded the permitted amount and the claimant did not comply with the agreed-upon conditions;

(3) Payment was made to an individual faced with a financial emergency who was later found to have been not eligible for payment; or

(4) Payment was made to an individual presumed to be disabled and such disability is not established.

(d) *Exception.* Even though conditions described in paragraph (a) of this section apply because your impairment is no longer disabling, we will not suspend your benefits if after November 1980:

(1) You are participating in an appropriate vocational rehabilitation program (that is, one that has been approved under a State plan approved under Title I of the Rehabilitation Act of 1973 and which meets the requirements outlined in 34 CFR part 361) which you began during your disability;

(2) Your disability did not end before December 1, 1980; and

(3) We have determined that your completion of the program, or your continuation in the program for a specific period of time, will significantly increase the likelihood that you will not have to return to the disability benefit rolls.

[40 FR 1510, Jan. 8, 1975, and 47 FR 31544, July 21, 1982; 47 FR 52693, Nov. 23, 1982, as amended at 51 FR 13494, Apr. 21, 1986; 51 FR 17618, May 14, 1986; 56 FR 55453, Oct. 28, 1991]