

§ 416.974a

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expense allowance, or reimbursement of out-of-pocket expenses. We will also disregard the services you perform as a volunteer in applying any of the substantial gainful activity tests discussed in paragraph (b)(6) of this section. This exclusion from the substantial gainful activity provisions will apply only if you are a volunteer in a program explicitly mentioned in the Domestic Volunteer Service Act of 1973 or the Small Business Act. Programs explicitly mentioned in those Acts include Volunteers in Service to America, University Year for ACTION, Special Volunteer Programs, Retired Senior Volunteer Program, Foster Grandparent Program, Service Corps of Retired Executives, and Active Corps of Executives. We will not exclude under this paragraph volunteer work you perform in other programs or any nonvolunteer work you may perform, including nonvolunteer work under one of the specified programs. For civilians in certain government-sponsored job training and employment programs, we evaluate the work activity on a case-by-case basis under the substantial gainful activity earnings test. In programs such as these, subsidies often occur. We will subtract the value of any subsidy and use the remainder to determine if you have done substantial gainful activity. See paragraphs (a)(2)–(3) of this section.

[46 FR 4871, Jan. 19, 1981, as amended at 48 FR 21939, May 16, 1983; 49 FR 22274, May 29, 1984; 54 FR 53605, Dec. 29, 1989; 64 FR 18570, Apr. 15, 1999; 64 FR 22903, Apr. 28, 1999; 65 FR 42789, July 11, 2000; 65 FR 82911, Dec. 29, 2000]

§ 416.974a When and how we will average your earnings.

(a) To determine your initial eligibility for benefits, we will average any earnings you make during the month you file for benefits and any succeeding months to determine if you are doing substantial gainful activity. If your work as an employee or as a self-employed person was continuous without significant change in work patterns or earnings, and there has been no change in the substantial gainful activity earnings levels, your earnings will be averaged over the entire period of work requiring evaluation to determine if

you have done substantial gainful activity.

(b) If you work over a period of time during which the substantial gainful activity earnings levels change, we will average your earnings separately for each period in which a different substantial gainful activity earnings level applies.

(c) If there is a significant change in your work pattern or earnings during the period of work requiring evaluation, we will average your earnings over each separate period of work to determine if any of your work efforts were substantial gainful activity.

[65 FR 42790, July 11, 2000]

§ 416.975 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* If you are working or have worked as a self-employed person, we will use the provisions in paragraphs (a) through (d) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate in connection with your application for supplemental security income benefits (when we make an initial determination on your application and throughout any appeals you may request). We will consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend on a number of different factors, such as capital investment and profit-sharing agreements. We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, then we will consider tests two and three. The tests are as follows: