

ACCESSING ASSISTIVE TECHNOLOGY

Chapter 8

Social Security Work Incentives

From a 17-Chapter Manual
Available by Chapter and in Manual Form

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Written by:

DISABILITY RIGHTS CALIFORNIA

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Chapter 8

SOCIAL SECURITY WORK INCENTIVES

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Chapter 8

SOCIAL SECURITY WORK INCENTIVES

Social Security provides cash benefits to eligible people with disabilities. In this chapter, we will discuss two programs.

Supplemental Security Income (SSI) is a joint federal and state benefit for people who become disabled before they have a substantial work history. This includes people born with disabilities or disabled in accidents during childhood. SSI provides a guaranteed grant for each eligible person.

Social Security Disability Income (SSDI) is a federal pension for people who become disabled after working for some time and who paid into the Social Security trust fund through payroll deductions. The amount of your monthly SSDI check depends on the amount of money you have paid into the Social Security system.

Social Security does not directly buy or provide assistive technology devices or services. However, Social Security has several work incentive programs that allow you to work and limit the impact your salary will have on your SSI or SSDI benefits. This chapter will discuss three work incentive programs - Plan to Achieve Self Support (PASS), Impairment Related Work Expense (IRWE), and Blind Work Expense (BWE). These programs allow you to shelter the amount you spend for employment-related assistive technology from consideration as income. Sheltering part of your income this way limits its impact on your SSI or SSDI benefits.

Social Security programs can be complex. This manual only covers work incentive programs through which you may access assistive technology. It is intended for people who receive SSI or SSDI and who work or would like to work. For more information on Social Security programs, see Disability Rights California's manual entitled "*Social Security: Service Rights and Entitlements Affecting Disabled Californians.*"

1. How do I determine if I am eligible for Supplemental Security Income (SSI)?

You must apply in person at the local Social Security office. If you cannot leave home due to a disability, you can apply over the telephone. You must complete the application and return it to the Social Security office. If approved, Social Security will pay benefits back to the first day of the month following application. As an

adult, you are eligible for Social Security benefits if you are unable to engage in substantial gainful activity (SGA) because of a medically determinable physical or mental impairment. The impairment must be expected to last 12 months or longer, or to result in death. There are different criteria for children to be eligible for benefits. Since Social Security has no programs for children to access assistive technology, this manual does not discuss coverage for children. You must be a U.S. citizen to be eligible for Social Security benefits.

2. How does Social Security determine benefits? How do earnings affect Social Security Disability Income (SSDI) benefits?

SSDI is like an insurance program. The amount of benefits you receive depends on the amount you have paid into Social Security from your earnings before becoming disabled. To be eligible for SSDI, you must be medically disabled and either not working or earning less than the substantial gainful activity (SGA) level which is \$900 per month for most people (effective January 1, 2007). This amount is to be adjusted annually according to the national average wage indicator. (See Question 5 for an explanation of SGA.) If you work, the amount of your earnings will affect your eligibility for SSDI. If you earn above SGA, then you may not be eligible for any SSDI payment. But, you can earn up to the SGA level without affecting the amount of your monthly SSDI payment.

Work incentive programs enable you to work and maintain SSDI eligibility by allowing you to deduct certain work-related expenses from your countable income before determining whether you have reached SGA. These expenses include costs of assistive technology. When Social Security calculates your eligibility each month, it will subtract those expenses from the amount of your earnings to determine countable income. Then it will compare your income to the SGA amount. The result is that you will be able to buy the assistive technology you need to work and keep a job, and continue to receive SSDI. (For a thorough discussion of countable income, see Disability Rights California's manual entitled "*Social Security: Service Rights and Entitlements Affecting Disabled Californians.*")

3. How does Social Security calculate Supplemental Security Income (SSI) benefits? How do earnings affect SSI benefits?

SSI is a need-based program, which means that you may only have a certain amount of income and resources before losing your eligibility for benefits. To be eligible for SSI, you must be medically disabled and either not working or earning less than the substantial gainful activity (SGA) level. (See question 5 for more

information on SGA.) There is no SGA requirement for a person who is blind, in the SSI program.

To receive SSI, you may not have more than \$2,000 in resources (excluding resources such as personal belongings, a primary residence, or a car) and must meet certain income (earnings) limitations. When you have earned income, such as salary from a job, the earnings will reduce your SSI grant amount for the month. Unearned income, such as a gift, will also reduce your SSI grant amount. Social Security looks at both your earned and your unearned income to determine countable income. (Both earned and unearned income are subject to certain exclusions and deductions.) Disability Rights California's manual entitled "*Social Security: Service Rights and Entitlements Affecting Disabled Californians*" explains these exclusions and deductions fully.

If you work and have countable income that exceeds SGA, you will not be eligible to begin receiving SSI benefits. The SGA requirement does not apply to a person who is Blind. Once you become eligible for SSI, SGA is not considered and you will be eligible for SSI until your income becomes too high to receive any grant. This means that you can earn more than SGA and still retain all or part of your SSI benefit. However, if your income continues to increase each month, your SSI benefit will decrease until you are no longer eligible for SSI. See Disability Rights California's manual entitled "*Social Security: Service Rights and Entitlements Affecting Disabled Californians,*" which explains how income affects your SSI grant.

Work incentive programs allow you to deduct certain work expenses from your earnings, including the cost of work-related assistive technology, when calculating your countable income. You may then be able to reduce countable income below the SGA level, thus becoming eligible for SSI or SSDI. It may also help you keep more of your monthly SSI grant.

4. What are the work incentive programs under Social Security?

Social Security work incentive programs are designed to encourage people with disabilities to seek employment without fear of losing their SSI or SSDI benefits. The goals of the work incentive programs are for you to:

- Become employed;
- Increase your independence and autonomy; and

- Become self-supporting.

Social Security has many work incentive programs. This manual covers only those through which you may get assistive technology devices and services. These programs are:

- Impairment-Related Work Expense (IRWE) deductions;
- Plans for Achieving Self-Support (PASS); and
- Blind Work Expenses (BWE).

These programs provide a work incentive because they allow you to work and earn money, but your income will not affect your benefits as much as it would otherwise.

5. What is Substantial Gainful Activity (SGA)?

SGA is a level of work that is substantial and gainful. It is defined as “work activity that involves doing significant physical or mental activities” even if you only do it part-time. 20 C.F.R. § 404.1572(a). Monthly countable earnings of more than \$900 (in 2007) usually demonstrate SGA. 20 C.F.R. § 404.1574. For SSDI beneficiaries who are blind, SGA is earnings over \$1500 per month. Activities such as personal care, household tasks, therapy, school attendance, club activities, or social programs are not considered SGA. 20 C.F.R. § 404.1572(c). Social Security uses SGA to determine your initial and continuing eligibility for SSDI and your initial eligibility for SSI (except for individuals who are Blind).

6. What is a Plan to Achieve Self Support (PASS)?

A PASS allows you to set aside income and resources for an occupational objective. 42 U.S.C. §§ 1382a(b)(4)(A)(iii), (B)(iv); 20 C.F.R. §§ 416.1180-1182. You can save a small amount each month towards a particular goal. A PASS can help you establish or maintain SSI income eligibility. It can also increase or help maintain your SSI payment amount as you gain the capacity for self-support. A PASS may now last beyond four years, and can be for education, vocational training, starting a business, or buying support services that enable you to work. However, if you need more than four years to complete your PASS, social security may grant you six-month extensions if warranted. The purpose of a PASS is to increase your ability to earn income, thus reducing your reliance on government benefits support in the long run. For Social Security to approve a PASS, there must be:

- 1) A reasonable chance that you can achieve your occupational goal; and
- 2) A clear connection between your goal and your ability to earn more money.

7. What types of assistive technology can I pay for under the Plan to Achieve Self Support (PASS) program?

The PASS program allows you to deduct from your income the costs of assistive technology such as:

- Equipment and supplies you need to establish and carry on a trade or business;
- Equipment or tools you need because of your condition or for your job;
- Modifications to buildings and vehicles to accommodate your disability; and
- The purchase and maintenance of a private vehicle.

8. How does a Plan to Achieve Self Support (PASS) affect my benefits?

Social Security does not count the income and resources set aside in a PASS when it determines your eligibility for SSI or figures the amount of your SSI benefit. A PASS will not affect countable income under the SSDI program.

Through a PASS, you can set aside earned income, unearned income (including SSDI) and resources, but not SSI benefits.

9. How can I get a Plan to Achieve Self Support (PASS)?

You need to complete a SSA form 545 - PASS application. You can get a PASS application on line at www.socialsecurity.gov, from a Social Security office, in person or by mail. You should write your PASS with the help of a rehabilitation specialist or an advocate. Your PASS should include:

- 1) A clearly stated occupational objective;
- 2) A schedule of when you will finish each step;
- 3) A list of expenditures with accurate costs; and
- 4) The income and resources you will exclude.

Social Security cannot turn down your PASS if it meets the proper criteria. There is no time limit for Social Security to decide on your PASS application. If you do not get a response within **30 days** of submitting an application, you should call the PASS Specialist, at Social Security, to ask about the status of your application. If Social Security does not approve your PASS, you may resubmit it with changes. You have the right to appeal a PASS disapproval. Instructions for appealing should be on the back of the decision.

10. What are Impairment Related Work Expense (IRWE) deductions?

An IRWE is an expense for an item or service that:

- Is directly related to enabling you to work; and
- That is related to a physical or mental impairment.

20 C.F.R. § 416.976(a)

Congress established IRWE deductions in 1980 for SSI and SSDI recipients in response to concern over the limited number of people with disabilities who tried to work. Through an IRWE, you can deduct the cost of certain items and services needed for work from your earnings, whether or not you also need the items for your normal daily activities. The SGA level is determined after these expenses are deducted. The result is that IRWE deductions may reduce your earnings below the

SGA level for purposes of SSI or SSDI eligibility. IRWE deductions may reduce earned income in determining your SSI benefit and your eligibility for special SSI status under section 1619(a) of the Social Security Act. Unlike a PASS, IRWE's and BWE's (discussed in questions 16 and 17) don't allow you to shelter a small amount each month towards a big goal, such as a lift-equipped van. They are for regular monthly expenses or purchases you can make now. But, they may be easier to establish. See question 15 for a further discussion of advantages and disadvantages.

11. What types of assistive technology can I deduct as Impairment Related Work Expenses (IRWE)?

Allowable expenses that you may deduct as IRWE include payments for:

- The purchase, installation, maintenance, and repair of an impairment-related item; and
- An impairment-related service that is necessary for work.

There is no separate deduction for the repair or maintenance of vehicles you use to get to and from work. These costs are already included in a separate deduction for mileage.

Expenses that are related to the work setting, transportation expenses for travel to and from work, and community residence expenses are all deductible as IRWE. Medicare or Medi-Cal may provide many of the items that are listed below. Any assistive technology that you get through Medicare or Medi-Cal is not deductible as IRWE.

There are several categories of assistive technology that are deductible as IRWE. These categories include:

Medical Devices

- Medical devices (durable medical equipment):
 - 1) Can withstand repeated use;
 - 2) Primarily serve a medical purpose; and
 - 3) Generally would not be useful to you in the absence of an illness or injury.

Medical devices include wheelchairs, hemodialysis equipment, respirators, intermittent positive pressure breathing machines, pacemakers, inhalators, nebulizers, suction machines, traction equipment, braces (leg, arm, back and neck), and similar items. 20 C.F.R. §§ 416.976(c)(2), 404.1576(c)(2).

- **Prostheses:** Prostheses include devices that replace internal body organs or external body parts. They include artificial hips and artificial replacements of arms, legs, or other body parts. Payments for prosthetic devices that are primarily for cosmetic purposes, rather than functional purposes, are usually not deductible. 20 C.F.R. §§ 416.976 (c) (3); 404.1576 (c) (3).
- **Work-Related Equipment:** This is equipment (other than medical devices and prostheses) that you may need to perform your job, to move from home to transportation, or to control the disabling condition so you can function in a work activity. Costs for these expenses are deductible only when you pay for them. They are not deductible if your employer pays for them. Examples might include one-handed keyboards, page-turning devices, measuring instruments, vision and sensory aids for the blind, telecommunications devices for the deaf, and tools which have been specifically designed to accommodate your employment. Training to use the equipment is also deductible. If you otherwise deduct these as a business expense, and you are self-employed, they are not deductible as IRWE. 20 C.F.R. §§ 416.976(c)(4), 404.1576(c)(4).
- **Residential modifications:** You may deduct the costs of modifying your residence as IRWE if the expense is necessary for you to get to your means of transportation to work. For example, exterior ramps, railings, or pathways are part of the total process of getting you to and from work. Generally, interior modifications are not deductible since they primarily help you in the home. 20 C.F.R. §§ 416.976(c)(4)(ii), 404.1576(c)(4)(ii).
- **Residential modifications:** If you work at home, you may deduct the cost of residential modifications that pertain specifically to your in-home work space. These may include enlarged doorways into an office or work space, or modifications to your work area to accommodate problems in dexterity. Any tax deductions you take as self-employment expenses are not deductible as IRWE. 20 C.F.R. §§ 416.976(c)(4)(ii), 404.1576(c)(4)(ii).

- **Essential nonmedical appliances and equipment:** Portable room heaters, air conditioners, humidifiers, dehumidifiers, electric air cleaners, and posture chairs which ordinarily are not used for medical purposes, are not deductible as IRWE. However, if you can establish an impairment-related and medically verified need for such an item, it may be deductible. To be essential, the item must be so vital that you could not function at work without it. If, for example, you have a severe respiratory condition, an air cleaner may be deductible as IRWE. Items such as exercise machines are not deductible unless:

- 1) Your treating physician prescribes it; and
- 2) You need it to be able to work. 20 C.F.R. §§ 416.976(c)(4)(iii), 404.1576(c)(4)(i)(iii).

- **Routine drugs and medical services:** If you pay for them, you can deduct drugs and medical services if you need them to control your disabling condition so you can work. 20 C.F.R. §§ 416.976(c)(5), 404.1576(c)(5).

- **Other items and services:** You may be able to deduct as IRWE:

- 1) Eyeglasses (if they correct a disabling visual impairment);
- 2) Expendable medical supplies such as bandages, face masks, incontinence pads, etc.; and the cost of buying and maintaining a guide dog. 20 C.F.R. §§ 416.976(c)(6)(ii), 404.1576(c)(6)(ii).

- **Vehicle modification.** If you need a specially modified vehicle in order to work, the cost of the modification (but not the cost of the vehicle) is deductible as an IRWE (if you pay for it). You may also deduct the operating costs of a modified vehicle that are directly related to work. You may not deduct any modifications paid for by the Department of Rehabilitation. 20 C.F.R. 416.976 (c) (6) (iii) (A); 404.1576 (c) (6) (iii) (A).

12. What are the criteria for Impairment Related Work Expense (IRWE) deductions?

IRWE deductions must meet the following criteria:

- The expense must be impairment-related;
- You must need the item or service to work;
- You must have verification that you actually used the item or service; and
- You must pay for the item or service out-of-pocket (it cannot be funded, subsidized, or reimbursed).

The amount of the expense must be within “reasonable limits.” The expense must correspond to a month in which you worked and used the item or service.

13. Are there limits on Impairment Related Work Expense (IRWE) deductions?

“Reasonable limits,” apply to the allowable deduction for IRWE. Generally, the amount you pay for medical services and devices, prostheses, and medically related items is reasonable if the cost is no more than the prevailing rate for the same item or service in your community. 20 C.F.R. § 404.1576(f)(1). Social Security can use Medicare guidelines, if available, to determine reasonable cost, which is generally less than the prevailing rates. But, Social Security almost always accepts the actual cost paid for a device if it appears reasonable and consistent with prevailing costs in the community. If the amount you paid is higher than the prevailing rate, you can deduct an amount equal to the prevailing rate.

14. What kinds of payments can I deduct as Impairment Related Work Expenses (IRWE)? How do I deduct them?

You can deduct recurring expenses, such as monthly rental charges or installment payments, as you pay the expenses, including interest and other charges. 20 C.F.R. §§ 416.976(e)(1), 404.1576(e)(1). You can choose to deduct **non-recurring expenses** entirely in one month, or you can spread the deductions over 12 consecutive months. A non-recurring expense might be a down payment or a single large purchase. Payments that you make in anticipation of work may also be deducted if you make them within 11 months before you began working. If the item is useful during months you are not working, only the portion related to the months you work is deductible. 20 C.F.R. §§ 416.976(e)(4), 404.1576(e)(4).

15. What is the relationship between Impairment Related Work Expenses (IRWE) and a Plan to Achieve Self Support (PASS)?

Expenses that you have deducted as PASS expenses are not allowed as IRWE deductions. If PASS does not cover the entire cost of the item or service, however, you may deduct the remainder as IRWE. The expense must be within a reasonable limit, and it must meet IRWE requirements. In determining SGA, the entire amount of the item or service, up to the reasonable limit, is deductible. Because of the way Social Security determines countable income, if you can deduct an item as either an IRWE or PASS expense, it is to your benefit to deduct the expense through a PASS.

16. What are Blind Work Expenses (BWE)?

If you are blind, Social Security does not count any work expenses you incur in order to work in determining your SSI eligibility and payment amount if you are:

- 1) Under age 65, or
- 2) Over 65 and received SSI due to blindness for the month before you turned 65.

Some examples of assistive technology that may be BWE are Braille printers, visual or sensory aids, scanners, “talking” computers and Braille materials.

17. What is the relationship between Blind Work Expenses (BWE) and Impairment Related Work Expenses (IRWE)?

If you are blind, BWE deductions allow you to shelter income to meet work expenses similar to IRWE deductions. There are some differences, however. BWE deductions apply only to SSI benefits, not SSDI benefits. The exclusions under BWE and IRWE are similar, but not identical. Expenses deductible under a BWE need not relate directly to your impairment; it can be any work expense if you are blind. IRWE must be directly related to your impairment. Because of the way budgets are calculated, if you can deduct an item as either BWE or IRWE, it is better to use the BWE deduction.

18. If Social Security denies my Plan to Achieve Self Support (PASS), Impairment Related Work Expenses (IRWE), or Blind Work Expenses (BWE), can I appeal?

You can appeal any decision made by Social Security. This includes denial or reduction of benefits, overpayment, or a dispute over PASS, IRWE or BWE deductions. The time for appealing is generally 60 days from when you receive a notice with which you disagree. If you file the appeal within 10 days, you may continue to receive current benefits pending the outcome of the appeal. If you lose the appeal, you may have to pay for the benefits you received during your appeal.

The administrative appeals process has three levels:

- 1) Reconsideration by either case review, informal conference, or formal conference. You can choose which method of reconsideration you want. In a case review, someone at Social Security not involved in the original decision reviews your file and agrees or disagrees with the decision. In both informal and formal conferences, you meet with someone at Social Security who was not involved in the original decision. The difference is that in a formal conference, you can subpoena witnesses. For PASS and IRWE disputes, a formal conference is generally preferable as you can bring witnesses and/or a representative. It may take longer than a case review, however.
- 2) If you are not satisfied with the result of the reconsideration, you may go to the second level, a hearing in front of an administrative law judge.
- 3) If you do not like the administrative law judge's decision, you may request the third level of the administrative appeals process, an appeals council review.

You can appeal an unfavorable appeals council decision to state or federal court.