reference "(4) or (5)" and adding in its place "or (4)".

8. Section 404.346 is amended by revising paragraph (b) to read as follows:

§ 404.346 Your relationship as wife, husband, widow, or widower based upon a deemed valid marriage.

* * * * *

(b) *Entitlement based upon a deemed valid marriage.* To be entitled to benefits as a wife, husband, widow or widower as the result of a deemed valid marriage, you and the insured must have been living in the same household (see § 404.347) at the time the insured died or, if the insured is living, at the time you apply for benefits. However, a marriage that had been deemed valid, shall continue to be deemed valid if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of death of the insured individual.

Subpart E—Deductions; Reductions; and Nonpayments of Benefits

9. The authority citation for Subpart E of Part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424, 427, and 1302.

10. Section 404.403 is amended by adding new paragraphs (a)(3) and (4) to read as follows:

§ 404.403 Reduction where total monthly benefits exceed maximum family benefits payable.

(a) * * *

(3) The benefits of an individual entitled as a divorced spouse or surviving divorced spouse will not be reduced pursuant to this section. The benefits of all other individuals entitled on the same record will be determined under this section as if no such divorced spouse or surviving divorced spouse were entitled to benefits.

(4) In any case where more than one individual is entitled to benefits as the spouse or surviving spouse of a worker for the same month, and at least one of those individuals is entitled based on a marriage not valid under State law (see §§ 404.345 and 404.346), the benefits of the individual whose entitlement is based on a valid marriage under State law will not be reduced pursuant to this section. The benefits of all other individuals entitled on the same record (unless excluded by paragraph (a)(3) of this section) will be determined under this section as if such validly married individual were not entitled to benefits.

* * * * *

[FR Doc. 93–30154 Filed 12–9–93; 8:45 am]
BILLING CODE 4190–29–P

---

20 CFR Part 416

RIN 0960–AC77

Supplemental Security Income for the Aged, Blind, and Disabled; Redeterminations of Supplemental Security Income Eligibility

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations amend the policy on how we establish the beginning of the supplemental security income (SSI) redetermination period when reviewing a recipient's eligibility to ensure that he or she continues to be eligible and receives the correct SSI benefit amount. This new policy eliminates gaps that occur in the redetermination process under current regulations. The effects of these final regulations are administrative simplification and increased payment accuracy.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8470.

SUPPLEMENTARY INFORMATION:

Background

Section 1611(c)(1) of the Social Security Act (the Act) provides that eligibility for and the amount of SSI benefits shall be redetermined at such time or times as may be provided by the Secretary of Health and Human Services (the Secretary). Regulations at § 416.204(c) state the period for which a redetermination applies by explaining which months the first and subsequent redetermination periods include.

These regulations currently provide that the first redetermination period includes: (1) The month in which we make the redetermination, (2) all the months after the month of first eligibility, and (3) future months until the second redetermination.

The current regulations further provide that subsequent redetermination periods include: (1) The month in which we make the redetermination, (2) all the months after the last time we made a redetermination, and (3) future months until the next redetermination.

These current regulations do not provide for the consideration of all factors of eligibility for the entire relevant period because the review period does not begin with the first day of the month of the last determination of eligibility.

The redetermination period, therefore, omits a month or part of a month. Factors which could affect continued eligibility or payment amounts potentially go undetected. For example: The last redetermination review period was initiated on September 4, 1989. The next redetermination period of review includes all months after the month we last initiated a redetermination; i.e., it begins October 1, 1989. As a result, the period September 5 through September 30, 1989, is never reviewed to see if the individual was eligible for that period or if he or she was receiving the correct SSI benefit amount.

Final Regulations

We are amending the regulations at § 416.204(c)(1)(ii) to include in the first redetermination period all months beginning with the first day of: the most recent month of eligibility/re-eligibility; or application; or deferred/updated development (applicable when nonmedical issues in a disability case are not fully developed until a disability allowance is made).

In addition, we are amending § 416.204(c)(2)(ii) to include in subsequent redetermination periods all months beginning with the first day of the month the last redetermination was initiated.

Comments

These regulations were published as a Notice of Proposed Rulemaking on November 20, 1992 (57 FR 54732). A 60-day comment period was provided. We received one public comment which was from an organization. This public comment supported the regulations and did not raise any issues. We are, therefore, adopting the regulations as proposed.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. The program savings and the administrative costs will be insignificant and are estimated at less than $1 million a year. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance: Program No. 93.807—Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: August 19, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: October 4, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416 of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for part 416, subpart B continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93–66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94–241, 90 Stat. 268; and sec. 2 of Pub. L. 99–643, 100 Stat. 3574.

2. In § 416.204, paragraphs (c)(1)(ii) and (c)(2)(ii) are revised to read as follows:

§ 416.204 Redeterminations of SSI eligibility.

* * * * *

(c) * * *

(1) * * *

(ii) All months beginning with the first day of the latest of the following:

(A) The month of first eligibility or re-eligibility; or

(B) The month of application; or

(C) The month of deferred or updated development; and

* * * * *

(2) * * *

(ii) All months beginning with the first day of the month the last redetermination was initiated; and

* * * * *

[FR Doc. 93–30151 Filed 12–9–93; 8:45 am]

BILLING CODE 4190–29–P

---

20 CFR Part 416

RIN 0960–AD60

Supplemental Security Income Maximum Payment Limit ($30) When Medicaid Is Not Paying Toward the Cost of Institutional Care Because the Individual Transferred a Resource

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations reflect amendments to the Social Security Act (the Act) made by section 303(c)(2) of the Medicare Catastrophic Coverage Act of 1988. The Act, as amended by that section, provides, for supplemental security income (SSI) purposes, that the reduced SSI payment rate of $360 a year ($720 for a couple) which is applied to residents of certain medical care facilities which are receiving Medicaid payments for the cost of care of those residents, must also be applied to residents for whom Medicaid payments are denied because they transferred a resource for less than fair market value.

EFFECTIVE DATE: These rules are effective on December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–759.

SUPPLEMENTARY INFORMATION:

Background

Public Law 100–360, the "Medicare Catastrophic Coverage Act of 1988," was enacted on July 1, 1988. Section 303(c)(2) of this law amended section 1611(e)(1)(B) of the Act and provides that the reduced SSI payment rate of $360 a year ($720 for a couple) which is applied to residents of certain medical care facilities which are receiving Medicaid payments for the cost of care of those residents, must also be applied to residents for whom Medicaid payments are denied because they transferred a resource for less than fair market value. In these final regulations, we are reflecting this statutory change.

Prior to enactment of Public Law 100–360, the SSI payment amount was reduced to $360 a year for individuals and to $720 a year for couples in medical care facilities only when more than 50 percent of the cost of their care was paid under a State plan approved under title XIX of the Act (Medicaid). Under Medicaid rules, if an individual applying for or receiving nursing facility services or their equivalent disposes of resources for less than fair market value, with some exceptions, Medicaid will not cover the cost of such services for a period of time. See section 1917(c) of the Act. Since the general Medicaid rule required the denial or suspension of this assistance when such a disposal of resources occurred and the reduced SSI payment amounts were used only if Medicaid contributed to the cost of the institutional medical care, an SSI claimant in a private medical care facility who disposed of resources for less than fair market value and became ineligible for Medicaid prior to the enactment of Public Law 100–360 could have been eligible for an unreduced SSI payment amount. On the other hand, under section 1611(e)(1)(A) of the Act, an SSI claimant in a public medical care facility who became ineligible for Medicaid on this basis, would have become ineligible for SSI altogether. Section 1611(e)(1)(B) of the Act, as amended by section 303(c)(2) of Public Law 100–360, addressed the anomaly presented by the private institution situation and the elimination of SSI in the public institution situation by providing that the same reduced benefit rate must be applied when Medicaid payments are not being made because of the provisions of section 1917(c) of the Act which preclude Medicaid contributions for the costs of certain types of care when the individual transferred a resource for less than fair market value.

We are amending § 416.414 of the regulations to reflect the changes made by Public Law 100–360 to section 1611(e)(1)(B) of the Act. Specifically, § 416.414 is being amended to provide that the reduced benefit rate will apply to individuals who are in medical care facilities and for whom Medicaid is not paying more than 50 percent of the cost of care because of application of the provisions of section 1917(c) of the Act.

Regulatory Procedures

Justification for Final Rules

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides

exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of proposed rulemaking and public comment procedures because such rulemaking is unnecessary. These rules merely reflect, without exercise of discretion, the provisions of sections 1611(e)(1)(B) of the Act as amended by section 303(c)(2) of Public Law 100–360, which are effective with respect to any periods of Medicaid ineligibility based on transfers of assets occurring on or after July 1, 1988.

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because there are no program costs or administrative savings associated with these regulations and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental security income.

Dated: July 23, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 22, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, title 20, chapter III, part 416 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 1102, 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382 (a), (b), (c), and (e), 1382a, 1382f, and 1383.

2. Section 416.414 is amended by revising the introductory text of paragraph (a) and paragraph (a)(2) to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.

(a) *General rule.* There is a reduced SSI benefit rate for persons who are in medical care facilities where more than 50 percent of the cost of their care is paid under a State plan approved under title XIX of the Social Security Act (Medicaid). This reduced SSI benefit rate also applies to persons who are in medical care facilities where more than 50 percent of the cost of care would have been paid under an approved Medicaid State plan but for the application of section 1917(c) of the Act due to a transfer of assets for less than fair market value. Persons to whom this benefit rate applies are—

* * * * *

(2) Those who reside for part of a month in a public institution and for the rest of the month are in a public or private medical care facility where Medicaid pays or would have paid (but for the application of section 1917(c) of the Act) more than 50 percent of the cost of their care.

* * * * *

[FR Doc. 93–30155 Filed 12–9–93; 8:45 am]

BILLING CODE 4190–29–P

Food and Drug Administration

21 CFR Part 178

[Docket No. 91F–0480]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,1-difluoroethane as a blowing agent in the production of polystyrene articles intended to contact food. This action is in response to a petition filed by E.I. duPont de Nemours and Co., Inc.

DATES: Effective December 10, 1993; written objections and requests for a hearing by January 10, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 3, 1992 (57 FR 291), FDA announced that a food additive petition (FAP 2B4303) had been filed by E.I. duPont de Nemours and Co., Inc., Wilmington, DE 19898. The petition proposed that § 178.3010 *Adjuvant substances used in the manufacture of foamed plastics* (21 CFR 178.3010) be amended to provide for the safe use of 1,1-difluoroethane as a blowing agent in the production of polystyrene articles intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that 21 CFR 178.3010 should be amended as set forth below.

This action will permit manufacturers of foamed polystyrene articles for contact with all food types to substitute 1,1-difluoroethane for the currently used hydrochlorofluorocarbon-22 (HCFC–22), which, because of its ozone depletion properties, is scheduled to be phased out of all noninsulating foam applications by January 1, 1994. During its review of the petition, FDA consulted with the U.S. Environmental Protection Agency (EPA) to determine whether FDA approval of this petition would be consistent with EPA's efforts to control hydrochlorofluorocarbons (HCFC's). On September 25, 1992, EPA advised FDA that approval of 1,1-difluoroethane as an alternative blowing agent in food service foam packaging is consistent with the Clean Air Act Amendments of 1990 under section 610, Non-Essential Products Containing Chlorofluorocarbons, which mandated that HCFC's are to be phased out of all noninsulating foam applications by January 1, 1994.

EPA further advised FDA that EPA is conducting risk assessments of HCFC alternatives under section 612 of the Clean Air Act Amendments of 1990, the Significant New Alternatives Policy (SNAP). The SNAP program has evaluated 1,1-difluoroethane and found it to be an environmentally appropriate