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(2) If you show us, as provided in paragraph (a)(2) of this section, that the presumed value is higher than the actual value of the food or shelter you receive, we use the actual amount to figure your unearned income.

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48575, Nov. 26, 1985; 58 FR 63888, Dec. 3, 1993; 70 FR 6345, Feb. 7, 2005]

§416.1141 When the presumed value rule applies.

The presumed value rule applies whenever we must count in-kind support and maintenance as unearned income and the one-third reduction rule does not apply. This means that the presumed value rule applies if you are living—

(a) In another person's household (as described in §416.1132(b)) but not receiving both food and shelter from that person;

(b) In your own household (as described in §416.1132(c)). For exceptions, see §416.1142 if you are in a public assistance household and §416.1143 if you are in a noninstitutional care situation;

(c) In a nonmedical institution including any—

(1) Public nonmedical institution if you are there for less than a full calendar month;

(2) Public or private nonprofit educational or vocational training institution;

(3) Private nonprofit retirement home or similar institution where there is an express obligation to provide your full support and maintenance or where someone else pays for your support and maintenance. For exceptions, see §416.1144; and

(4) For-profit institution where someone else pays for your support and maintenance. If you or the institution pay for it, see §416.1145.

§416.1142 If you live in a public assistance household.

(a) *Definition.* A public assistance household is one in which every member receives some kind of public income-maintenance payments. These are payments made under—

(1) Title IV–A of the Social Security Act (Temporary Assistance for Needy Families);

(2) Title XVI of the Social Security Act (SSI, including federally administered State supplements and State administered mandatory supplements);

(3) The Refugee Act of 1980 (Those payments based on need);

(4) The Disaster Relief and Emergency Assistance Act;

(5) General assistance programs of the Bureau of Indian Affairs;

(6) State or local government assistance programs based on need (tax credits or refunds are not assistance based on need); and

(7) U.S. Department of Veterans Affairs programs (those payments based on need).

(b) *How the presumed value rule applies.* If you live in a public assistance household, we consider that you are not receiving in-kind support and maintenance from members of the household. In this situation, we use the presumed value rule only if you receive food or shelter from someone outside the household.

[45 FR 65547, Oct. 3, 1980, as amended at 57 FR 53850, Nov. 13, 1992; 70 FR 6345, Feb. 7, 2005; 70 FR 41137, July 18, 2005]

§416.1143 If you live in a noninstitutional care situation.

(a) *Definitions.* For purposes of this subpart you live in a noninstitutional care situation if all the following conditions exist:

(1) You are placed by a public or private agency under a specific program such as foster or family care;

(2) The placing agency is responsible for your care;

(3) You are in a private household (not an institution) which is licensed or approved by the placing agency to provide care; and

(4) You, a public agency, or someone else pays for your care.

(b) *How the presumed value rule applies.* You are not receiving in-kind support and maintenance and the presumed value rule does not apply if you pay the rate the placing agency establishes. We consider this established rate to be the current market value for the in-kind support and maintenance you are receiving. The presumed value rule applies if you pay less than the established rate and the difference is

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paid by someone else other than a public or private agency providing social services described in §416.1103(b) or assistance based on need described in §416.1124(c)(2).

§416.1144 If you live in a nonprofit retirement home or similar institution.

(a) *Definitions.* For purposes of this section the following definitions apply:

(1) *Nonprofit retirement home or similar institution* means a nongovernmental institution as defined under §416.1101, which is, or is controlled by, a private nonprofit organization and which does not provide you with—

(i) Services which are (or could be) covered under Medicaid, or

(ii) Education or vocational training.

(2) *Nonprofit organization* means a private organization which is tax exempt under section 501(a) of the Internal Revenue Code of 1954 and is of the kind described in section 501 (c) or (d) of that code.

(3) An *express obligation to provide your full support and maintenance* means there is either a legally enforceable written contract or set of membership rules providing that the home, institution, or organization—

(i) Will provide at least all of your food and shelter needs; and

(ii) Does not require any current or future payment for that food and shelter. (For purposes of this paragraph, a lump sum prepayment for lifetime care is not a current payment.)

(b) *How the presumed value rule applies.* The presumed value rule applies if you are living in a nonprofit retirement home or similar institution where there is an express obligation to provide your full support and maintenance or where someone else pays for your support and maintenance. The rule does not apply to the extent that—

(1) The home, institution, or nonprofit organization does not have an express obligation to provide your full support and maintenance; and

(2) The home, institution, or nonprofit organization receives no payment for your food or shelter, or receives payment from another nonprofit organization.

[45 FR 65547, Oct. 3, 1980, as amended at 51 FR 34464, Sept. 29, 1986; 70 FR 6345, Feb. 7, 2005]

§416.1145 How the presumed value rule applies in a nonmedical for-profit institution.

If you live in a nonmedical for-profit institution, we consider the amount accepted by that institution as payment in full to be the current market value of whatever food or shelter the institution provides. If you are paying or are legally indebted for that amount, you are not receiving in-kind support and maintenance. We do not use the presumed value rule unless someone else pays for you.

[45 FR 65547, Oct. 3, 1980, as amended at 70 FR 6345, Feb. 7, 2005]

IN-KIND SUPPORT AND MAINTENANCE IN SPECIAL CIRCUMSTANCES

§416.1147 How we value in-kind support and maintenance for a couple.

(a) *Both members of a couple live in another person's household and receive food and shelter from that person.* When both of you live in another person's household throughout a month and receive food and shelter from that person, we apply the one-third reduction to the Federal benefit rate for a couple (§416.1131).

(b) *One member of a couple lives in another person's household and receives food and shelter from that person and the other member of the couple is in a medical institution.* (1) If one of you is living in the household of another person who provides you with both food and shelter, and the other is temporarily absent from the household as provided in §416.1149(c)(1) (in a medical institution that receives substantial Medicaid payments for his or her care (§416.211(b))), and is ineligible in the month for either benefit payable under §416.212, we compute your benefits as if you were separately eligible individuals (see §416.414(b)(3)). This begins with the first full calendar month that one of you is in the medical institution. The one living in another person's household is eligible at an eligible individual's Federal benefit rate and one-third of that rate is counted as income not subject to any income exclusions. The one in the medical institution cannot receive more than the reduced benefit described in §416.414(b)(3)(i).