

## § 220.144

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(4) *If the claimant worked in a sheltered workshop.* Before January 1, 2001 if the claimant worked in a sheltered workshop or a comparable facility especially set up for severely impaired persons, the Board will ordinarily consider that the claimant's earnings from this work show that the claimant has engaged in substantial gainful activity if the claimant's earnings average more than the amounts in Table 1 of this section. Average monthly earnings from a sheltered workshop or a comparable facility that are equal to or less than those indicated in Table 1 of this section will ordinarily show that the claimant has not engaged in substantial gainful activity without the need to consider the other information, as described in paragraph (b)(6) of this section, regardless of whether they are more or less than those indicated in paragraph (b)(3) of this section. When the claimant's earnings from a sheltered workshop or comparable facility are equal to or less than those amounts indicated in Table 1 of this section, the Board will consider the provisions of paragraph (b)(6) of this section only if there is evidence that the claimant may have done substantial gainful activity. For work performed in a sheltered workshop or comparable facility beginning January 1, 2001, the rules of paragraph (b)(2), (3), and (6) apply the same as they do to any other work done by an employee.

(5) *If there is evidence showing that the claimant may have done substantial gainful activity.* If there is evidence showing that the claimant may have done substantial gainful activity, the Board will apply the criteria in paragraph (b)(6) of this section regarding comparability and value of services.

(6) *Earnings that are not high enough to ordinarily show that the claimant engaged in substantial gainful activity.* (i) Before January 1, 2001, if the claimant's average monthly earnings were between the amounts shown in paragraphs (b)(2) and (3) of this section, the Board will generally consider other information in addition to the claimant's earnings (see paragraph (b)(6)(iii) of this section). This rule generally applies to employees who did not work in a sheltered workshop or a comparable facility, although the Board may apply

it to some people who work in sheltered workshops or comparable facilities (see paragraph (b)(4) of this section).

(ii) Beginning January 1, 2001, if the claimant's average monthly earnings are equal to or less than the amounts determined under paragraph (b)(2) of this section, the Board will generally not consider other information in addition to the claimant's earnings unless there is evidence indicating that the claimant may be engaging in substantial gainful activity or that the claimant is in a position to defer or suppress his or her earnings.

(iii) Examples of other information the Board may consider include, whether—

(A) The claimant's work is comparable to that of unimpaired people in the claimant's community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, and

(B) The claimant's work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in the claimant's community.

[56 FR 12980, Mar 28, 1991, as amended at 64 FR 62976, Nov. 18, 1999; 72 FR 21101, Apr. 30, 2007]

### § 220.144 Evaluation guides for a self-employed claimant.

(a) *If the claimant is a self-employed claimant.* The Board will consider the claimant's activities and their value to the claimant's business to decide whether the claimant has engaged in substantial gainful activity if the claimant is self-employed. The Board will not consider the claimant's income alone since the amount of income the claimant actually receives may depend upon a number of different factors like capital investment, profit sharing agreements, etc. The Board will generally consider work that the claimant is forced to stop after a short time because of his or her impairment(s) as an unsuccessful work attempt and the claimant's income from that work will not show that the claimant is able to do substantial gainful activity. The

Board will evaluate the claimant's work activity on the value to the business of the claimant's services regardless of whether the claimant receives an immediate income for his or her services. The Board considers that the claimant has engaged in substantial gainful activity if—

(1) The claimant's work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired persons in the claimant's community who are in the same or similar businesses as their means of livelihood;

(2) The claimant's work activity, although not comparable to that of unimpaired persons, is clearly worth the amount shown in §220.143(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employed person to do the work the claimant is doing; or

(3) The claimant renders services that are significant to the operation of the business and receives a substantial income from the business.

(b) *What the Board means by significant services*—(1) *Claimants who are not farm landlords*. If the claimant is not a farm landlord and the claimant operates a business entirely by himself or herself, any services that the claimant renders are significant to the business. If the claimant's business involves the services of more than one person, the Board will consider the claimant to be rendering significant services if he or she contributes more than half the total time required for the management of the business or he or she renders management services for more than 45 hours a month regardless of the total management time required by the business.

(2) *Claimants who are farm landlords*—(i) *General*. If the claimant is a farm landlord, that is, the claimant rents farm land to another, the Board will consider the claimant to be rendering significant services if the claimant materially participates in the production or the management of the production of the things raised on the rented farm. If the claimant was given social security earnings credits because he or she materially participated in the activi-

ties of the farm and he or she continues these same activities, the Board will consider the claimant to be rendering significant services.

(ii) *Material participation*. (A) The claimant will have established that he or she is materially participating if he or she—

(1) Furnishes a large portion of the machinery, tools, and livestock used in the production of the things raised on the rented farm; or

(2) Furnishes or advances monies or assumes financial responsibility for a substantial part of the expense involved in the production of the things raised on the rented farm.

(B) The claimant will have presented strong evidence that he or she is materially participating if he or she periodically—

(1) Advise or consults with the other person who under the rental agreement produces the things raised on the rented farm; and

(2) Inspects the production activities on the land.

(iii) *Production*. The term "production" refers to the physical work performed and the expenses incurred in producing the things raised on the farm. It includes activities like the actual work of planting, cultivating, and harvesting of crops, and the furnishing of machinery, implements, seed, and livestock.

(iv) *Management of the production*. The term "management of the production" refers to services performed in making managerial decisions about the production of the crop, such as when to plant, cultivate, dust, spray or harvest. It includes advising and consulting, making inspections, and making decisions on matters, such as rotation of crops, the type of crops to be grown, the type of livestock to be raised, and the type of machinery and implements to be furnished.

(c) *What the Board means by substantial income*. After the claimant's normal business expenses are deducted from the claimant's gross income to determine net income, the Board will deduct the reasonable value of any unpaid help, any soil bank payments that were included as farm income, and impairment-related work expenses described in §220.145 that have not been deducted

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in determining the claimant's net earnings from self-employment. The Board will consider the resulting amount of income from the business to be substantial if—

(1) It averages more than the amounts described in § 220.143(b)(2); or

(2) It averages less than the amounts described in § 220.143(b)(2) but the livelihood which the claimant gets from the business is either comparable to what it was before the claimant became severely impaired or is comparable to that of unimpaired self-employed persons in the claimant's community who are in the same or similar businesses as their means of livelihood.

### § 220.145 Impairment-related work expenses.

(a) *General.* When the Board figures the claimant's earnings in deciding if the claimant has done substantial gainful activity, the Board will subtract the reasonable costs to the claimant of certain items and services which, because of his or her impairment(s), the claimant needs and uses to enable him or her to work. The costs are deductible even though the claimant also needs or uses the items and services to carry out daily living functions unrelated to his or her work. Paragraph (b) of this section explains the conditions for deducting work expenses. Paragraph (c) of this section describes the expenses the Board will deduct. Paragraph (d) of this section explains when expenses may be deducted. Paragraph (e) of this section describes how expenses may be allocated. Paragraph (f) of this section explains the limitations on deducting expenses. Paragraph (g) of this section explains the Board's verification procedures.

(b) *Conditions for deducting impairment-related work expenses.* The Board will deduct impairment-related work expenses if—

(1) The claimant is otherwise disabled as defined in § 220.26;

(2) The severity of the claimant's impairment(s) requires the claimant to purchase (or rent) certain items and services in order to work;

(3) The claimant pays the cost of the item or service. No deduction will be allowed to the extent that payment has

been or will be made by another source. No deduction will be allowed to the extent that the claimant has been, could be, or will be reimbursed for such cost by any other source (such as through a private insurance plan, Medicare or Medicaid, or other plan or agency). For example, if the claimant purchases crutches for \$80 but the claimant was, could be, or will be reimbursed \$64 by some agency, plan, or program, the Board will deduct only \$16;

(4) The claimant pays for the item or service in a month he or she is working (in accordance with paragraph (d) of this section); and

(5) The claimant's payment is in cash (including checks or other forms of money). Payment in kind is not deductible.

(c) *What expenses may be deducted—(1) Payments for attendant care services.* (i) If because of the claimant's impairment(s) the claimant needs assistance in traveling to and from work, or while at work the claimant needs assistance with personal functions (e.g., eating, toileting) or with work-related functions (e.g., reading, communicating), the payments the claimant makes for those services may be deducted.

(ii) If because of the claimant's impairment(s) the claimant needs assistance with personal functions (e.g., dressing, administering medications) at home in preparation for going to and assistance in returning from work, the payments the claimant makes for those services may be deducted.

(iii)(A) The Board will deduct payments the claimant makes to a family member for attendant care services only if such person, in order to perform the services, suffers an economic loss by terminating his or her employment or by reducing the number of hours he or she worked.

(B) The Board considers a family member to be anyone who is related to the claimant by blood, marriage or adoption, whether or not that person lives with the claimant.

(iv) If only part of the claimant's payment to a person is for services that come under the provisions of paragraph (c)(1) of this section, the Board will only deduct that part of the payment which is attributable to those services. For example, an attendant