

## § 220.145

## 20 CFR Ch. II (4–1–11 Edition)

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

gets the claimant ready for work and helps the claimant in returning from work, which takes about 2 hours a day. The rest of the attendant's 8-hour day is spent cleaning the claimant's house and doing the claimant's laundry, etc. The Board would only deduct one-fourth of the attendant's daily wages as an impairment-related work expense.

(2) *Payment for medical devices.* If the claimant's impairment(s) requires that the claimant utilize medical devices in order to work, the payments the claimant makes for those devices may be deducted. As used in this subparagraph, medical devices include durable medical equipment which can withstand repeated use, is customarily used for medical purposes, and is generally not useful to a person in the absence of an illness or injury. Examples of durable medical equipment are wheelchairs, hemodialysis equipment, canes, crutches, inhalators and pacemakers.

(3) *Payments for prosthetic devices.* If the claimant's impairment(s) requires that the claimant utilize a prosthetic device in order to work, the payments the claimant makes for that device can be deducted. A prosthetic device is that which replaces an internal body organ or external body part. Examples of prosthetic devices are artificial replacements of arms, legs and other parts of the body.

(4) *Payments for equipment—(i) Work-related equipment.* If the claimant's impairment(s) requires that the claimant utilize special equipment in order to do his or her job, the payments the claimant makes for that equipment may be deducted. Examples of work-related equipment are one-hand typewriters, vision aids, sensory aids for the blind, telecommunication devices for the deaf and tools specifically designed to accommodate a person's impairment(s).

(ii) *Residential modifications.* If the claimant's impairment(s) requires that the claimant make modifications to his or her residence, the location of the claimant's place of work will determine if the cost of these modifications will be deducted. If the claimant is employed away from home, only the cost of changes made outside of the claimant's home to permit the claimant to get to his or her means of transpor-

tation (e.g., the installation of an exterior ramp for a wheelchair confined person or special exterior railings or pathways for someone who requires crutches) will be deducted. Costs relating to modifications of the inside of the claimant's home will not be deducted. If the claimant works at home, the costs of modifying the inside of the claimant's home in order to create a working space to accommodate the claimant's impairment(s) will be deducted to the extent that the changes pertain specifically to the space in which the claimant works. Examples of such changes are the enlargement of a doorway leading into the workspace or modification of the workspace to accommodate problems in dexterity. However, if the claimant is self-employed at home, any cost deducted as a business expense cannot be deducted as an impairment-related work expense.

(iii) *Non-medical appliances and equipment.* Expenses for appliances and equipment which the claimant does not ordinarily use for medical purposes are generally not deductible. Examples of these items are portable room heaters, air conditioners, humidifiers, dehumidifiers, and electric air cleaners. However, expenses for such items may be deductible when unusual circumstances clearly establish an impairment-related and medically verified need for such an item because it is for the control of the claimant's disabling impairment(s), thus enabling the claimant to work. To be considered essential, the item must be of such a nature that if it were not available to the claimant there would be an immediate adverse impact on the claimant's ability to function in his or her work activity. In this situation, the expense is deductible whether the item is used at home or in the working place. An example would be the need for an electric air cleaner by a person with severe respiratory disease who cannot function in a non-purified air environment. An item such as an exercycle is not deductible if used for general physical fitness. If an exercycle is prescribed and used as necessary treatment to enable the claimant to work, the Board will deduct payments the claimant makes toward its cost.

(5) *Payments for drugs and medical services.* (i) If the claimant must use drugs or medical services (including diagnostic procedures) to control his or her impairment(s), the payments the claimant makes for them may be deducted. The drugs or services must be prescribed (or utilized) to reduce or eliminate symptoms of the claimant's impairment(s) or to slow down its progression. The diagnostic procedures must be performed to ascertain how the impairment(s) is progressing or to determine what type of treatment should be provided for the impairment(s).

(ii) Examples of deductible drugs and medical services are anti-convulsant drugs to control epilepsy or anticonvulsant blood level monitoring; antidepressant medication for mental impairments; medication used to allay the side effects of certain treatments; radiation treatment or chemotherapy for cancer patients; corrective surgery for spinal impairments; electroencephalograms and brain scans related to a disabling epileptic impairment; tests to determine the efficacy of medication on a diabetic condition; and immunosuppressive medications that kidney transplant patients regularly take to protect against graft rejection.

(iii) The Board will only deduct the costs of drugs or services that are directly related to the claimant's impairment(s). Examples of non-deductible items are routine annual physical examinations, optician services (unrelated to a disabling visual impairment) and dental examinations.

(6) *Payments for similar items and services—(i) General.* If the claimant is required to utilize items and services not specified in paragraphs (c)(1) through (5) of this section, but which are directly related to his or her impairment(s) and which the claimant needs to work, their costs are deductible. Examples of such items and services are medical supplies and services not discussed above, the purchase and maintenance of a dog guide which the claimant needs to work, and transportation.

(ii) *Medical supplies and services not described above.* The Board will deduct payments the claimant makes for expendable medical supplies, such as in-

continence pads, catheters, bandages, elastic stockings, face masks, irrigating kits, and disposable sheets and bags. The Board will also deduct payments the claimant makes for physical therapy which the claimant requires because of his or her impairment(s) and which the claimant needs in order to work.

(iii) *Payments for transportation costs.* The Board will deduct transportation costs in these situations:

(A) The claimant's impairment(s) requires that in order to get to work the claimant needs a vehicle that has structural or operational modifications. The modifications must be critical to the claimant's operation or use of the vehicle and directly related to the claimant's impairment(s). The Board will deduct the cost of the modifications, but not the cost of the vehicle. The Board will also deduct a mileage allowance for the trip to and from work. The allowance will be based on data compiled by the Federal Highway Administration relating to vehicle operating costs.

(B) The claimant's impairment(s) requires the claimant to use driver assistance, taxicabs or other hired vehicles in order to work. The Board will deduct amounts paid to the driver and, if the claimant's own vehicle is used, the Board will also deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(C) The claimant's impairment(s) prevents the claimant from taking available public transportation to and from work and the claimant must drive his or her (unmodified) vehicle to work. If the Board can verify through the claimant's physician or other sources that the need to drive is caused by the claimant's impairment(s) (and not due to the unavailability of public transportation), the Board will deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(7) *Payments for installing, maintaining, and repairing deductible items.* If the device, equipment, appliance, etc., that

the claimant utilizes qualifies as a deductible item as described in paragraphs (c)(2), (3), (4) and (6) of this section, the costs directly related to installing, maintaining and repairing these items are also deductible. (The costs which are associated with modifications to a vehicle are deductible. Except for a mileage allowance, as provided for in paragraph (c)(6)(iii)(A) of this section, the costs which are associated with the vehicle itself are not deductible.)

(d) *When expenses may be deducted*—(1) *Effective date.* To be deductible, an expense must be incurred after November 30, 1980. An expense may be considered incurred after that date if it is paid thereafter even though pursuant to a contract or other arrangement entered into before December 1, 1980.

(2) *Payments for services.* A payment the claimant makes for services may be deducted if the services are received while the claimant is working and the payment is made in a month the claimant is working. The Board considers the claimant to be working even though he or she must leave work temporarily to receive the services.

(3) *Payments for items.* A payment the claimant makes toward the cost of a deductible item (regardless of when it is acquired) may be deducted if payment is made in a month claimant is working. See paragraph (e)(4) of this section when purchases are made in anticipation of work.

(e) *How expenses are allocated*—(1) *Recurring expenses.* The claimant may pay for services on a regular periodic basis, or the claimant may purchase an item on credit and pay for it in regular periodic installments or the claimant may rent an item. If so, each payment the claimant makes for the services and each payment the claimant makes toward the purchase or rental (including interest) is deductible in the month it is made.

*Example:* B starts work in October 1981 at which time she purchases a medical device at a cost of \$4,800 plus interest charges of \$720. Her monthly payments begin in October. She earns and receives \$400 a month. The term of the installment contract is 48 months. No downpayment is made. The monthly allowable deduction for the item would be \$115 (\$5,520 divided by 48) for each month of work during the 48 months.

(2) *Non-recurring expenses.* Part or all of the claimant's expenses may not be recurring. For example, the claimant may make a one-time payment in full for an item or service or make a downpayment. If the claimant is working when he or she makes the payment, the Board will either deduct the entire amount in the month the claimant pays it or allocate the amount over a 12-consecutive-month period beginning with the month of payment, whichever the claimant selects.

*Example:* A begins working in October 1981 and earns \$525 a month. In the same month, he purchases and pays for a deductible item at a cost of \$250. In this situation the Board could allow a \$250 deduction for October 1981, reducing A's earnings below the substantial gainful activity level for that month.

If A's earnings had been \$15 above the substantial gainful activity earnings amount, A probably would select the option of projecting the \$250 payment over the 12-month period, October 1981–September 1982, giving A an allowable deduction of \$20.83 a month for each month of work during that period. This deduction would reduce A's earnings below the substantial gainful activity level for 12 months.

(3) *Allocating downpayments.* If the claimant makes a downpayment, the Board will, if the claimant chooses, make a separate calculation for the downpayment in order to provide for uniform monthly deductions. In these situations the Board will determine the total payment that the claimant will make over a 12-consecutive-month period beginning with the month of the downpayment and allocate that amount over the 12 months. Beginning with the 13th month, the regular monthly payment will be deductible. This allocation process will be for a shorter period if the claimant's regular monthly payments will extend over a period of less than 12 months.

*Example 1.* C starts working in October 1981, at which time he purchases special equipment at a cost of \$4,800, paying \$1,200 down. The balance of \$3,600, plus interest of \$540, is to be repaid in 36 installments of \$115 a month beginning November 1981. C earns \$500 a month. He chooses to have the downpayment allocated. In this situation the Board would allow a deduction of \$205.42 a month for each month of work during the period October 1981 through September 1982. After September 1982, the deduction amount would be the regular monthly payment of

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\$115 for each month of work during the remaining installment period.

Explanation:

Downpayment in October 1981 .....	\$1,200
Monthly payments:	
November 1981 through Sep-	
tember 1982 .....	1,265
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	12/\$2,465=205.42

*Example 2.* D, while working, buys a deductible item in July 1981, paying \$1,450 down. However, his first monthly payment of \$125 is not due until September 1981. D chooses to have the downpayment allocated. In this situation, the Board would allow a deduction of \$225 a month for each month of work during the period July 1981 through June 1982. After June 1982, the deduction amount would be the regular monthly payment of \$125 for each month of work.

Explanation:

Downpayment in July 1981 .....	\$1,450
Monthly payments:	
September 1981 through June 1982 .....	1,250
	<hr/>
	12/\$2,700=\$225

(4) *Payments made in anticipation of work.* A payment made toward the cost of a deductible item that the claimant made in any of the 11 months preceding the month he or she started working will be taken into account in determining the claimant's impairment-related work expenses. When an item is paid for in full during the 11 months preceding the month the claimant started working, the payment will be allocated over the 12-consecutive-month period beginning with the month of the payment. However, the only portion of the payment which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for with a one-time payment of \$600, the deductible amount would be \$450 (\$600 divided by 9). Installment payments (including a downpayment) that the claimant made for a particular item during the 11 months preceding the month he or she started working will be totalled and considered to have been made in the month of the claimant's first payment for that item within this 11-month period. The sum of these payments will be allocated

over the 12-consecutive-month period beginning with the month of the claimant's first payment (but never earlier than 11 months before the month work began). However, the only portion of the total which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for in 3 monthly installments of \$200 each, the total payment of \$600 will be considered to have been made in the month of the first payment, that is, 3 months before the month work began. The deductible amount would be \$450 (\$600 divided by 12, multiplied by 9). The amount, as determined by these formulas, will then be considered to have been paid in the first month of work. The Board will deduct either this entire amount in the first month of work or allocate it over a 12-consecutive-month period, beginning with the first month of work, whichever the claimant selects. In the above examples, the claimant would have the choice of having the entire \$450 deducted in the first month of work or having \$37.50 a month (\$450 divided by 12) deducted for each month that he or she works over a 12-consecutive-month period, beginning with the first month of work. To be deductible, the payments must be for durable items such as medical devices, prostheses, work-related equipment, residential modifications, non-medical appliances and vehicle modifications. Payments for services and expendable items such as drugs, oxygen, diagnostic procedures, medical supplies and vehicle operating costs are not deductible for the purpose of this paragraph.

(f) *Limits on deductions.* (1) The Board will deduct the actual amounts the claimant pays towards his or her impairment-related work expenses unless the amounts are unreasonable. With respect to durable medical equipment, prosthetic devices, medical services, and similar medically-related items and services, the Board will apply the prevailing charges under Medicare (Part B of the title XVIII, Health Insurance for the Aged and Disabled) to the extent that this information is readily available. Where the Medicare guides are used, the Board will consider

the amount that the claimant pays to be reasonable if it is no more than the prevailing charge for the same item or service under the Medicare guidelines. If the amount the claimant actually pays is more than the prevailing charge for the same item under the Medicare guidelines, the Board will deduct from the claimant's earnings the amount the claimant paid to the extent he or she establishes that the amount is consistent with the standard or normal charge for the same or similar item or service in his or her community. For items and services that are not listed in the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which such guides cannot be used because the information is not readily available, the Board will consider the amount the claimant pays to be reasonable if it does not exceed the standard or normal charge for the same or similar item or service in the claimant's community.

(2) Impairment-related work expenses are not deducted in computing the claimant's earnings for purposes of determining whether the claimant's work was "services" as described in § 220.170.

(3) The decision as to whether the claimant performed substantial gainful activity in a case involving impairment-related work expenses for items or services necessary for the claimant to work generally will be based upon the claimant's "earnings" and not on the value of "services" the claimant rendered. (See §§ 220.143 (b)(6)(i) and (ii), and 220.144(a)). This is not necessarily so, however, if the claimant is in a position to control or manipulate his or her earnings.

(4) No deduction will be allowed to the extent that any other source has paid or will pay for an item or service. No deduction will be allowed to the extent that the claimant has been, could be, or will be reimbursed for payments he or she made. (See paragraph (b)(3) of this section.)

(5) The provisions described in the foregoing paragraphs in this section are effective with respect to expenses incurred on or after December 1, 1980, although expenses incurred after November 1980, as a result of contractual

or other arrangements entered into before December 1980, are deductible. For months before December 1980, the Board will deduct impairment-related work expenses from the claimant's earnings only to the extent they exceeded the normal work-related expenses the claimant would have had if the claimant did not have his or her impairment(s). The Board will not deduct expenses, however, for those things with the claimant needed even when he or she was not working.

(g) *Verification.* The Board will verify the claimant's need for items or services for which deductions are claimed, and the amount of the charges for those items or services. The claimant will also be asked to provide proof that he or she paid for the items or services.

### Subpart M—Disability Annuity Earnings Restrictions

#### § 220.160 How work for a railroad employer affects a disability annuity.

A disability annuity is not payable and the annuity must be returned for any month in which the disabled annuitant works for an employer as defined in part 202 of this chapter.

#### § 220.161 How work affects an employee disability annuity.

In addition to the condition in § 220.160, the employee's disability annuity is not payable and the employee must return the annuity payment for any month in which the employee earns more than \$400 (after deduction of impairment-related work expenses) in employment or self-employment of any kind. Any annuity amounts withheld because the annuitant earned over \$400 in a month may be paid after the end of the year, as shown in § 220.164. The \$400 monthly limit no longer applies when the employee attains retirement age and the disability annuity is converted to a full age annuity. See § 220.145 for the definition of impairment-related work expenses.

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