

#### § 404.1591

#### 20 CFR Ch. III (4–1–11 Edition)

on your work activity that results in a medical cessation determination, we will vacate the medical cessation determination if—

(i) You provide us evidence that establishes that you met the requirements of paragraph (i)(1) of this section as of the date of the start of your continuing disability review and that the start of the review was erroneous; and

(ii) We receive the evidence within 12 months of the date of the notice of the initial determination of medical cessation.

[51 FR 16825, May 7, 1986, as amended at 71 FR 66856, Nov. 17, 2006]

#### **§ 404.1591 If your medical recovery was expected and you returned to work.**

If your impairment was expected to improve and you returned to full-time work with no significant medical limitations and acknowledge that medical improvement has occurred, we may find that your disability ended in the month you returned to work. Unless there is evidence showing that your disability has not ended, we will use the medical and other evidence already in your file and the fact that you returned to full-time work without significant limitations to determine that you are no longer disabled. (If your impairment is not expected to improve, we will not ordinarily review your claim until the end of the trial work period, as described in § 404.1592.)

*Example:* Evidence obtained during the processing of your claim showed that you had an impairment that was expected to improve about 18 months after your disability began. We, therefore, told you that your claim would be reviewed again at that time. However, before the time arrived for your scheduled medical re-examination, you told us that you had returned to work and your impairment had improved. We investigated immediately and found that, in the 16th month after your disability began, you returned to full-time work without any significant medical restrictions. Therefore, we would find that your disability ended in the first month you returned to full-time work.

[50 FR 50130, Dec. 6, 1985]

#### **§ 404.1592 The trial work period.**

(a) *Definition of the trial work period.* The trial work period is a period during which you may test your ability to

work and still be considered disabled. It begins and ends as described in paragraph (e) of this section. During this period, you may perform *services* (see paragraph (b) of this section) in as many as 9 months, but these months do not have to be consecutive. We will not consider those services as showing that your disability has ended until you have performed services in at least 9 months. However, after the trial work period has ended we will consider the work you did during the trial work period in determining whether your disability ended at any time after the trial work period.

(b) *What we mean by services.* When used in this section, *services* means any activity (whether legal or illegal), even though it is not substantial gainful activity, which is done in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We generally do not consider work done without remuneration to be *services* if it is done merely as therapy or training or if it is work usually done in a daily routine around the house or in self-care. We will not consider work you have done as a volunteer in the federal programs described in section 404.1574(d) in determining whether you have performed services in the trial work period.

(1) *If you are an employee.* We will consider your work as an employee to be *services* if:

(i) *Before January 1, 2002,* your earnings in a month were more than the amount(s) indicated in Table 1 for the year(s) in which you worked.

(ii) *Beginning January 1, 2002,* your earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying \$530 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for 1999. We will then round the resulting amount to the next higher multiple of \$10 where such amount is a multiple of \$5 but not of \$10 and to the nearest multiple of \$10 in any other case.

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(2) *If you are self-employed.* We will consider your activities as a self-employed person to be *services* if:

(i) *Before January 1, 2002,* your net earnings in a month were more than the amount(s) indicated in Table 2 of this section for the year(s) in which you worked, or the hours you worked in the business in a month are more than the number of hours per month indicated in Table 2 for the years in which you worked.

(ii) *Beginning January 1, 2002,* you work more than 80 hours a month in the business, or your net earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying \$530 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for 1999. We will then round the resulting amount to the next higher multiple of \$10 where such amount is a multiple of \$5 but not of \$10 and to the nearest multiple of \$10 in any other case.

TABLE 1—FOR EMPLOYEES

For months	You earn more than
In calendar years before 1979 .....	\$50
In calendar years 1979–1989 .....	75
In calendar years 1990–2000 .....	200
In calendar year 2001 .....	530

TABLE 2—FOR THE SELF-EMPLOYED

For months	Your net earnings are more than	Or you work in the business more than
In calendar years before 1979 .....	\$50	15 hours.
In calendar years 1979–1989 .....	75	15 hours.
In calendar years 1990–2000 .....	200	40 hours.
In calendar year 2001 .....	530	80 hours.

(c) *Limitations on the number of trial work periods.* You may have only one trial work period during a period of entitlement to cash benefits.

(d) *Who is and is not entitled to a trial work period.* (1) You are generally entitled to a trial work period if you are entitled to disability insurance benefits, child's benefits based on disability, or widow's or widower's or surviving divorced spouse's benefits based on disability.

(2) You are not entitled to a trial work period—

(i) If you are entitled to a period of disability but not to disability insurance benefits, and you are not entitled to any other type of disability benefit under title II of the Social Security Act (*i.e.*, child's benefits based on disability, or widow's or widower's benefits or surviving divorced spouse's benefits based on disability);

(ii) If you perform work demonstrating the ability to engage in substantial gainful activity during any required waiting period for benefits;

(iii) If you perform work demonstrating the ability to engage in substantial gainful activity within 12 months of the onset of the impairment(s) that prevented you from performing substantial gainful activity and before the date of any notice of determination or decision finding that you are disabled; or

(iv) For any month prior to the month of your application for disability benefits (see paragraph (e) of this section).

(e) *When the trial work period begins and ends.* The trial work period begins with the month in which you become entitled to disability insurance benefits, to child's benefits based on disability or to widow's, widower's, or surviving divorced spouse's benefits based on disability. It cannot begin before the month in which you file your application for benefits, and for widows, widowers, and surviving divorced spouses, it cannot begin before December 1, 1980. It ends with the close of whichever of the following calendar months is the earliest:

(1) The 9th month (whether or not the months have been consecutive) in which you have performed services if that 9th month is prior to January 1992;

(2) The 9th month (whether or not the months have been consecutive and whether or not the previous 8 months of services were prior to January 1992) in which you have performed services within a period of 60 consecutive months if that 9th month is after December 1991; or

(3) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are no longer disabled. See § 404.1594 for information on how we decide whether your disability continues or ends.

(f) *Nonpayment of benefits for trial work period service months.* See § 404.471 for an explanation of when benefits for trial work period service months are not payable if you are convicted by a Federal court of fraudulently concealing your work activity.

[45 FR 55584, Aug. 20, 1980, as amended at 49 FR 22273, May 29, 1984; 50 FR 50130, Dec. 6, 1985; 54 FR 53605, Dec. 29, 1989; 65 FR 42787, July 11, 2000; 65 FR 82910, Dec. 29, 2000; 71 FR 66866, Nov. 17, 2006]

**§ 404.1592a The reentitlement period.**

(a) *General.* The reentitlement period is an additional period after 9 months of trial work during which you may continue to test your ability to work if you have a *disabling impairment*, as defined in § 404.1511. If you work during the reentitlement period, we may decide that your disability has ceased because your work is substantial gainful activity and stop your benefits. However, if, after the month for which we found that your disability ceased because you performed substantial gainful activity, you stop engaging in substantial gainful activity, we will start paying you benefits again; you will not have to file a new application. The following rules apply if you complete a trial work period and continue to have a disabling impairment:

(1) The first time you work after the end of your trial work period *and* engage in substantial gainful activity, we will find that your disability ceased. When we decide whether this work is substantial gainful activity, we will apply all of the relevant provisions of §§ 404.1571–404.1576 including, but not limited to, the provisions for averaging earnings, unsuccessful work attempts, and deducting impairment-related work expenses, as well as the special rules for evaluating the work you do after you have received disability benefits for at least 24 months. We will find that your disability ceased in the first month after the end of your trial work period in which you do substantial gainful activity, applying all the relevant provisions in §§ 404.1571–404.1576.

(2)(i) If we determine under paragraph (a)(1) of this section that your disability ceased during the reentitlement period because you perform substantial gainful activity, you will be paid benefits for the first month after the trial work period in which you do substantial gainful activity (*i.e.*, the month your disability ceased) and the two succeeding months, whether or not you do substantial gainful activity in those succeeding months. After those three months, we will stop your benefits for any month in which you do substantial gainful activity. (See §§ 404.316, 404.337, 404.352 and 404.401a.) If your benefits are stopped because you do substantial gainful activity, they may be started again without a new application and a new determination of disability if you stop doing substantial gainful activity in a month during the reentitlement period. In determining whether you do substantial gainful activity in a month for purposes of stopping or starting benefits during the reentitlement period, we will consider only your work in, or earnings for, that month. Once we have determined that your disability has ceased during the reentitlement period because of the performance of substantial gainful activity as explained in paragraph (a)(1) of this section, we will not apply the provisions of §§ 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts, the provisions of § 404.1574a regarding averaging of earnings, or the special rules in §§ 404.1574(b)(3)(iii) and