

## § 404.315

(d) *How do delayed retirement credits affect the special minimum primary insurance amount?* We do not add delayed retirement credits to your old-age benefit if your benefit is based on the special minimum primary insurance amount described in § 404.260. We add the delayed retirement credits only to your old-age benefit based on your regular primary insurance amount, *i.e.* as computed under one of the other provisions of subpart C of this part. If your benefit based on the regular primary insurance amount plus your delayed retirement credits is higher than the benefit based on your special minimum primary insurance amount, we will pay the higher amount to you. However, if the special minimum primary insurance amount is higher than the regular primary insurance amount without the delayed retirement credits, we will use the special minimum primary insurance amount to determine the family maximum and the benefits of others entitled on your earnings record.

(e) *What is the effect of my delayed retirement credits on the benefit amount of others entitled on my earnings record?*—

(1) *Surviving spouse or surviving divorced spouse.* If you earn delayed retirement credits during your lifetime, we will compute benefits for your surviving spouse or surviving divorced spouse based on your regular primary insurance amount plus the amount of those delayed retirement credits. All delayed retirement credits, including any earned during the year of death, can be used in computing the benefit amount for your surviving spouse or surviving divorced spouse beginning with the month of your death. We compute delayed retirement credits up to but not including the month of death.

(2) *Other family member.* We do not use your delayed retirement credits to increase the benefits of other family members entitled on your earnings record.

(3) *Family maximum.* We add delayed retirement credits to your benefit after we compute the family maximum. However, we add delayed retirement credits to your surviving spouse's or surviving divorced spouse's benefit be-

## 20 CFR Ch. III (4–1–13 Edition)

fore we reduce for the family maximum.

[68 FR 4703, Jan. 30, 2003, as amended at 75 FR 76259, Dec. 8, 2010]

### § 404.315 Who is entitled to disability benefits?

(a) *General.* You are entitled to disability benefits while disabled before attaining full retirement age as defined in § 404.409 if—

(1) You have enough social security earnings to be *insured for disability*, as described in § 404.130;

(2) You apply;

(3) You have a disability, as defined in § 404.1505, or you are not disabled, but you had a disability that ended within the 12-month period before the month you applied; and

(4) You have been disabled for 5 full consecutive months. This 5-month waiting period begins with a month in which you were both insured for disability and disabled. Your waiting period can begin no earlier than the 17th month before the month you apply—no matter how long you were disabled before then. No waiting period is required if you were previously entitled to disability benefits or to a period of disability under § 404.320 any time within 5 years of the month you again became disabled.

(b) *Prohibition against reentitlement to disability benefits if drug addiction or alcoholism is a contributing factor material to the determination of disability.* You cannot be entitled to a period of disability payments if drug addiction or alcoholism is a contributing factor material to the determination of disability and your earlier entitlement to disability benefits on the same basis terminated after you received benefits for 36 months during which treatment was available.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21930, May 16, 1983; 51 FR 10616, Mar. 28, 1986; 51 FR 16166, May 1, 1986; 53 FR 43681, Oct. 28, 1988; 57 FR 30119, July 8, 1992; 60 FR 8145, Feb. 10, 1995; 68 FR 4704, Jan. 30, 2003]

### § 404.316 When entitlement to disability benefits begins and ends.

(a) You are entitled to disability benefits beginning with the first month covered by your application in which you meet all the other requirements

for entitlement. If a waiting period is required, your benefits cannot begin earlier than the first month following that period.

(b) Your entitlement to disability benefits ends with the earliest of these months:

(1) The month before the month of your death;

(2) The month before the month you attain full retirement age as defined in § 404.409 (at full retirement age your disability benefits will be automatically changed to old-age benefits);

(3) The second month after the month in which your disability ends as provided in § 404.1594(b)(1), unless continued subject to paragraph (c); or (4) subject to the provisions of paragraph (d) of this section, the month before your termination month (§ 404.325).

(c)(1) Your benefits, and those of your dependents, may be continued after your impairment is no longer disabling if—

(i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);

(ii) You began participating in the program before the date your disability ended; and

(iii) We have determined under § 404.328 that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

(2) We generally will stop your benefits with the earliest of these months—

(i) The month in which you complete the program; or

(ii) The month in which you stop participating in the program for any reason (see § 404.327(b) for what we mean by “participating” in the program); or

(iii) The month in which we determine under § 404.328 that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability benefit rolls.

*Exception to paragraph (c):* In no case will we stop your benefits with a month earlier than the second month after the month your disability ends, provided that you meet all other re-

quirements for entitlement to and payment of benefits through such month.

(d) If, after November 1980, you have a disabling impairment (§ 404.1511), you will be paid benefits for all months in which you do not do substantial gainful activity during the reentitlement period (§ 404.1592a) following the end of your trial work period (§ 404.1592). If you are unable to do substantial gainful activity in the first month following the reentitlement period, we will pay you benefits until you are able to do substantial gainful activity. (Earnings during your trial work period do not affect the payment of your benefit.) You will also be paid benefits for the first month after the trial work period in which you do substantial gainful activity and the two succeeding months, whether or not you do substantial gainful activity during those succeeding months. After those three months, you cannot be paid benefits for any months in which you do substantial gainful activity.

(e) If drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.1535, you may receive disability benefits on that basis for no more than 36 months regardless of the number of entitlement periods you may have. Not included in these 36 months are months in which treatment for your drug addiction or alcoholism is not available, months before March 1995, and months for which your benefit payments were suspended for any reason. Benefits to your dependents may continue after the 36 months of benefits if, but for the operation of this paragraph, you would otherwise be entitled to benefits based on disability. The 36-month limit is no longer effective for benefits for months beginning after September 2004.

(f) If drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.1535 and your disability benefits are suspended for 12 consecutive months because of your failure to comply with treatment requirements, your disability benefits will be terminated effective the first month after such 12-month period. Benefits to your dependents may continue after the 12-month period if, but for the operation

## § 404.317

of this paragraph, you would otherwise be entitled to benefits based on disability.

[44 FR 34481, June 15, 1979, as amended at 47 FR 31542, July 21, 1982; 47 FR 52693, Nov. 23, 1982; 49 FR 22270, May 29, 1984; 51 FR 17617, May 14, 1986; 60 FR 8145, Feb. 10, 1995; 68 FR 4704, Jan. 30, 2003; 70 FR 36505, June 24, 2005]

### § 404.317 How is the amount of my disability benefit calculated?

Your monthly benefit is equal to the primary insurance amount (PIA). This amount is computed under the rules in subpart C of this part as if it was an old-age benefit, and as if you were 62 years of age at the beginning of the 5-month waiting period mentioned in § 404.315(a). If the 5-month waiting period is not required because of your previous entitlement, your PIA is figured as if you were 62 years old when you become entitled to benefits this time. Your monthly benefit amount may be reduced if you receive worker's compensation or public disability payments before you become 65 years old as described in § 404.408. Your benefits may also be reduced if you were entitled to other retirement-age benefits before you attained full retirement age (as defined in § 404.409).

[68 FR 4704, Jan. 30, 2003]

### § 404.320 Who is entitled to a period of disability.

(a) *General.* A period of disability is a continuous period of time during which you are disabled. If you become disabled, you may apply to have our records show how long your disability lasts. You may do this even if you do not qualify for disability benefits. If we establish a period of disability for you, the months in that period of time will not be counted in figuring your average earnings. If benefits payable on your earnings record would be denied or reduced because of a period of disability, the period of disability will not be taken into consideration.

(b) *Who is entitled.* You are entitled to a period of disability if you meet all the following conditions:

(1) You have or had a disability as defined in § 404.1505.

(2) You are *insured for disability*, as defined in § 404.130 in the calendar quarter in which you became disabled, or in

## 20 CFR Ch. III (4-1-13 Edition)

a later calendar quarter in which you were disabled.

(3) You file an application while disabled, or no later than 12 months after the month in which your period of disability ended. If you were unable to apply within the 12-month period after your period of disability ended because of a physical or mental condition as described in § 404.322, you may apply not more than 36 months after the month your disability ended.

(4) At least 5 consecutive months go by from the month in which your period of disability begins and before the month in which it would end.

[44 FR 34481, June 15, 1979, as amended at 48 FR 21930, May 16, 1983; 51 FR 10616, Mar. 28, 1986]

### § 404.321 When a period of disability begins and ends.

(a) *When a period of disability begins.* Your period of disability begins on the day your disability begins if you are insured for disability on that day. If you are not insured for disability on that day, your period of disability will begin on the first day of the first calendar quarter after your disability began in which you become insured for disability. Your period of disability may not begin after you have attained full retirement age as defined in § 404.409.

(b) *When disability ended before December 1, 1980.* Your period of disability ends on the last day of the month before the month in which you become 65 years old or, if earlier, the last day of the second month following the month in which your disability ended.

(c) *When disability ends after November 1980.* Your period of disability ends with the close of whichever of the following is the earliest—

(1) The month before the month in which you attain full retirement age as defined in § 404.409.

(2) The month immediately preceding your termination month (§ 404.325); or

(3) If you perform substantial gainful activity during the reentitlement period described in § 404.1592a, the last month for which you received benefits.

(d) *When drug addiction or alcoholism is a contributing factor material to the determination of disability.* (1) Your entitlement to receive disability benefit payments ends the month following the