



# Understanding Section 301

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*January 2019*

## **Continuation of Payments under Section 301**

When Social Security personnel conduct a medical continuing disability review (CDR) or an age-18 redetermination, they may find that a beneficiary no longer meets the medical requirements to receive disability benefits. If that happens, Social Security usually stops the individual's cash benefits and associated health insurance (Medicare and/or Medicaid). However, under certain specific conditions, Social Security may continue to provide cash disability payments and medical insurance (Medicare and/or Medicaid) to individuals who are participating in programs that may enable them to become self-supporting. In doing this, Social Security is making a short-term investment in an individual's benefits, "betting" that completing the vocational program will help the individual stay off disability benefits in the future.

Sections 225(b) and 1631(a)(6) of the Social Security Act, as amended, provide for continued payment of Title II and SSI disability or blindness benefits to individuals whose disability or blindness ends for medical reasons while they are participating in the Ticket to Work program or another program of vocational rehabilitation (VR) services, employment services, or other support services approved by Social Security, if Social Security determines that completion or continuation of the program will increase the likelihood of the individual's permanent removal from the disability or blindness benefit rolls. Social Security refers to this as "Section 301" because the initial legislative authority for continued payment of benefits to individuals in a VR program was provided in Section 301 of the Social Security Disability Amendments of 1980.

## **Eligibility Requirements for Section 301 Payments**

In order for Social Security to continue benefits under Section 301 provisions, an individual receiving Title II or SSI benefits based on disability or blindness must have medically ceased or been determined to be ineligible due to an age-18 redetermination and meet all of the following four requirements:

1. The individual is participating in an appropriate program of Vocational Rehabilitation (VR) services, employment services, or other support services;
2. The individual began participating in the program before the month his or her disability or blindness ceased;
3. For a Title II disability beneficiary, the individual's participation in the program continues through the 2-month grace period after cessation; and
4. Social Security must determine that the individual's completion of the program, or continuation in the program for a specified period-of-time, will increase the likelihood that the individual will not return to the disability or blindness benefit rolls.

Section 301 provisions do NOT provide continued payments to individuals who were found ineligible for disability benefits for reasons other than medical improvement. Individuals who receive continued SSI payments under Section 301 must also continue to meet all of the non-disability related standards for this program including the income and resource limits.

Let's take a look at each of the four requirements for Section 301 eligibility in detail.

### **Participating in an Appropriate Program**

Social Security defines an appropriate program of VR services, employment services, or other support services as one of the following:

1. An individualized education plan (IEP) developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of individuals with disabilities under the Individuals with Disabilities Education Act (IDEA), as amended. An individual must be age 18 through age 21 for this provision to apply. This provision is effective for Section 301 eligibility, determinations or decisions the Social Security Administration (SSA) makes on or after July 25, 2005.
2. A program carried out under an individual work plan (IWP) with an employment network under the Ticket to Work and Self-Sufficiency Program as described in DI 55020.001B;
3. A program carried out under an individualized plan for employment (IPE) with a State VR agency (i.e., a State agency administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973, as amended) as described in DI 55020.001D;

4. A program carried out under an IPE with an organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended;
5. As of March 1, 2006, a Plan to Achieve Self-Support (PASS);
6. A program of VR services, employment services, or other support services carried out under a similar, individualized written employment plan with one of the following:
  - a. An agency of the Federal government (e.g., Social Security or the Department of Veterans Affairs), including a provider under a Social Security demonstration project such as PROMISE (Promoting the Readiness of Minors in Supplemental Security Income). For more information about the PROMISE initiative, see the U.S. Department of Education’s PROMISE website:  
<http://www2.ed.gov/about/inits/ed/promise/index.html>;
  - b. A one-stop delivery system or specialized one-stop center described in section 134(c) of the Workforce Investment Act of 1998; or
  - c. Another provider of services approved by Social Security; including, but not limited to:
    - A public or private organization with expertise in the delivery or coordination of VR services, employment services, or other support services; or
    - A public, private or parochial school that provides or coordinates a program of VR services, employment services, or other support services carried out under an individualized program or plan, including a written service plan established under Section 504 of the Rehabilitation Act of 1973.

Social Security defines “participation” in very specific terms including the following:

- An individual is participating in an appropriate program if the individual participates in the activities and services outlined in his or her IWP, IPE, or individualized written employment plan similar to an IPE. For beneficiaries other than students ages 18 through 21 in an IEP, there must be a specific occupational or employment goal. “Competitive employment” isn’t sufficient.
- A student age 18 through 21 receiving services under an IEP is considered to be participating in the program if he or she is taking part in the activities and services outlined in the IEP.

- Social Security will determine that an individual is participating in a VR or similar program during interruptions of participation if the interruption is temporary. An interruption is temporary only if the individual resumes taking part in the activities and services outlined in his or her plan no more than three full calendar months after the last day of the month the interruption began.

Example of Interruption of Participation in an Appropriate Program:

Ms. Smith stopped taking part in the activities and services in her plan on January 13, 2019, and resumed taking part in such activities and services on April 27, 2019. Social Security determined that she is participating during the interruption in the program because she resumed taking part in the activities and services less than three months after the last day of the month the interruption began. If Ms. Smith resumed taking part in the activities and services on May 1, 2019, Social Security would determine that her participation in the program stopped when the interruption occurred (January 13, 2019) because she resumed taking part in the activities and services more than three full calendar months after the last day of the month the interruption began.

- Social Security determines a student age 18 through 21 who is participating in an IEP, leaves high school, and transitions to a VR or similar program no more than three full calendar months of the last day of the month he or she left school to be in one continuous period of participation.

Social Security's Office of Disability Operations (ODO) makes determinations about whether an individual is participating in an appropriate program for the purposes of Section 301 payments rather than field office personnel. Social Security gathers information about program participation by having the beneficiary complete SSA-4290-F4. This form is available online at POMS DI 14515.020 - Exhibits for Cases Involving Participation in a VR or Similar Program, which can be found online here: <https://secure.ssa.gov/apps10/poms.nsf/lrx/0414515020>

For more information, refer to POMS DI 14505.010 - Policy for Section 301 Payments to Individuals Participating in a Vocational Rehabilitation or Similar Program, found online at <https://secure.ssa.gov/apps10/poms.nsf/lrx/0414505010>

### **Participation in the Program Began Before the Disability Ceased**

For Section 301 payments to apply, a beneficiary must have started participating in the appropriate program of vocational rehabilitation, employment services or other support services before the date on which the disability ended or no longer met the standard. Keep in mind that in some cases, Social Security is delayed in conducting a CDR. When the review is finally conducted, the date on which the disability actually is determined to have ceased may be

some time ago. Participation in the program must have begun before that date. In most cases, Social Security defines the start date of services as being the date on which the beneficiary signed individualized plan.

Section 301 provisions also apply to youth whose disability is determined to have ended as a result of the SSI age-18 redetermination. Disability may cease at this point because the age-18 redetermination is based upon the more stringent adult definition of disability instead of the child's definition used in the SSI program for beneficiaries under age 18. Again, the requirement is that the student be participating in the appropriate program under an individualized plan before the disability is determined to have ended. In this case, the disability would be determined to have ended upon turning 18 since that is the date at which the adult standard is applied. Keep in mind that the age-18 redetermination generally occurs at some time during the 18th year. Because of this, it may be some months after the 18th birthday when Social Security conducts the review and makes a disability determination. While the SSI payment will continue for two months after the determination is made and then stop, Section 301 continued payments will not be available beyond this point if the individual was not already participating in school under an IEP or in some other vocational rehabilitation or employment services program by the 18th birthday.

### **Continuation in the Program will Increase the Likelihood that the Individual will Not Have to Return to the Disability or Blindness Benefit Rolls**

Social Security refers to this process as the "likelihood determination" and it is conducted by examiners at Social Security's Office of Disability Operations (ODO) rather than field office personnel. There are two processes Social Security uses when making likelihood determinations. One process for students ages 18 through 21 and another process for individuals participating in other programs.

#### **Likelihood Determinations for Students Ages 18 Through 21**

For students ages 18 through 21 who are receiving services through an IEP, ODO will assume that continuation in or completion of the program will increase the likelihood that there would be no need to return to the disability rolls. This means that students whose disability has ceased as a result of a medical CDR or an adverse age-18 redetermination avoid having to pass case-by-case "likelihood" determinations. In effect, Social Security is making a general policy statement based upon current research that completing an educational program is assumed to lead to positive outcomes that are beneficial to the disability programs.

Although a student participating in an IEP automatically meets the likelihood requirement, ODO must make a likelihood determination regarding participation in the VR program for students

who leave high school and transition directly into a VR or similar program within three full calendar months after the last day of the month he or she left school. This is the same process ODO applies to all other individuals participating in other programs.

**NOTE:** For individuals who are participating in the treatment group of PROMISE as defined in POMS [DI 14505.010B.6.a](#), Social Security will find that the individual's completion of or continuation in the program will increase the likelihood that he/she will not return to the disability or blindness benefit rolls without further development of likelihood.

### Likelihood Determinations for Individuals Participating in Other Programs

To determine that completion of the program (or continuation in the program for a specified period of time) will increase the likelihood that an individual will not return to the disability or blindness rolls, the examiner must find that the individual's completion of or continuation in the program will provide the individual with:

- Work experience that will make it more likely that, in the future, Social Security would find that the individual is able to do past relevant work, despite a possible future reduction in his/her residual functional capacity; or
- Education and/or skilled or semi-skilled work experience that will make it more likely that, in the future, Social Security would find that the individual is able to adjust to other work that exists in the national economy, despite a possible future reduction in his/her residual functional capacity.

During likelihood determinations, ODO personnel examine the following four factors:

#### 1. Evaluating work experience that will increase likelihood of doing past relevant work

For the purposes of making likelihood determinations, work experience means skills and abilities the individual will acquire through work he/she will perform while participating in his/her plan. The work experience should provide the individual with skills that he/she can use in past relevant or similar work.

The individual must be expected to perform such work long enough to learn to do it, and the experience must result in work performed at the substantial gainful activity level. The physical and mental demands of the work should be such that the individual would still be able to meet those demands despite a reduction in residual functional capacity.

- a. Definition of Past Relevant Work - Past relevant work is work that an individual performed within the past 15 years, was at the substantial gainful activity level, and lasted long enough for him/her to learn to do it.
- b. Definition of Residual Functional Capacity - Residual functional capacity (RFC) refers to what the individual can still do despite his/her impairments; it is the individual's capacity to perform work-related activities.

## 2. Evaluating education that will increase likelihood of adjusting to other work

Education means formal schooling or other training which contributes to the individual's ability to meet vocational requirements, for example, reasoning ability, communication skills, and arithmetic.

The education and/or training should provide for direct entry into skilled or semi-skilled work that exists in the national economy at the substantial gainful activity level. The physical and mental demands of the work should be such that the individual would still be able to meet those demands despite a reduction in residual functional capacity.

## 3. Evaluating skilled or semi-skilled work experience that will increase likelihood of adjusting to other work

Skilled or semi-skilled work experience should provide the individual with skills that will enable him/her to adjust to other work (different from past relevant work) that exists in the national economy, at the substantial gainful activity level, despite a possible future reduction in his/her residual functional capacity.

To evaluate the skills the individual will acquire as a result of completing his/her employment plan (or continuing in the plan for a specified period of time) and to determine the existence in the national economy of work the individual will be able to do despite a possible future reduction in his/her residual functional capacity (RFC), the examiner will need to know if the work goal is an unskilled, semi-skilled, or skilled occupation. The examiner will use the Dictionary of Occupational Titles, the Occupational Information Network, and other resources to make these determinations. In classifying occupations, ODO examiners use the following definitions:

- Unskilled work involves simple duties that can be learned on the job in a short period of time and requires little or no judgment.
- Semi-skilled work requires some skills and judgment but doesn't require doing the more complex work duties.

- Skilled work requires an individual to use judgment to determine the tasks to be performed and may require dealing with people, facts, figures or abstract ideas at a high level of complexity.
- Transferability of skills means skills that can be used in other jobs. Skills are transferable when the skilled or semi-skilled work activities the individual did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. Transferability depends largely on the similarity of occupationally significant work activities among different jobs. See [DI 25015.015A.3.g.](#) for special rules regarding transferability of skills for individuals age 55 or over.

#### 4. Determining whether work exists in the national economy

Work is considered to exist in the national economy when it exists in significant numbers either in the region where the individual lives or in several other regions of the country. It doesn't matter whether the work exists in the immediate area in which the individual lives, a specific job vacancy exists, or the individual would be hired if he/she applied for work. Isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where the individual lives are not considered work which exists in the national economy.

Clearly, the likelihood determination process is complex and involves the evaluation of numerous factors. Only ODO examiners may performed these determinations. For more information, refer to POMS DI 14510.020 - ODO Procedures for Making a Likelihood Determination, found online at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0414510020>

## **How Employment Affects Continuation of Benefits under Section 301**

Since Social Security makes Section 301 payments to help individuals support themselves while they prepare for employment, it stands to reason that engaging in paid work while in Section 301 status could have an effect on payment of benefits. When Social Security receives a work report on an individual in Section 301 status, they first determine if the work experience is part of the individual's IWP, IPE, similar individualized written employment plan, or IEP. If so, no further action is required and Section 301 payments may continue.

If the work experience isn't part of the individual's plan, Social Security will determine if the individual has stopped participating in his/her plan or if the program is completed. If either of these is true, Section 301 payments will terminate. If the individual is still participating in



his/her program but the work experience isn't part of the plan, Social Security will consider the following factors:

- Is the work at the substantial gainful activity level?
- Has the individual acquired the education, work skills or experience that was the basis for the initial likelihood determination?

These are indicators that the individual's continued participation in the program will no longer increase the likelihood of his/her permanent removal from the disability or blindness benefit rolls. If this is the case, Social Security will generally terminate Section 301 payment.

Substantial Gainful Activity (SGA) determinations, the Trial Work Period (TWP) and the extended period of eligibility (EPE) do not apply to individuals who receive Title II Section 301 payments due to participation in a VR or similar program. However, non-disability requirements for continued entitlement to or payment of Title II disability benefits still apply.

For SSI recipients, the standard SSI income and eligibility provisions continue to apply. This includes the application of work incentives such as Impairment Related Work Expenses (IRWE), Blind Work Expenses (BWE), Student Earned Income Exclusions (SEIE) and Plans to Achieve Self-Support (PASS). It's important to understand that while an existing PASS may be modified while an individual is receiving Section 301 payments, Social Security can't approve a new PASS after they have determined that an individual is no longer disabled or blind.

## **When Eligibility for Section 301 Payments Ends**

- Section 301 eligibility ends when an individual either completes the appropriate program of vocational rehabilitation, employment services, or other support services, or stops participating in this program for whatever reason. Section 301 payments may continue if the interruption in participation is temporary, meaning that it lasts for no more than three months.
- If Social Security determines that continuing participation in the program would no longer increase the likelihood that the individual would not have to return to the disability rolls, section 301 payments will cease. This last requirement would not apply to students aged 18 through 21 since Social Security is making a broad assumption that participation in an IEP will increase the likelihood that the student will not need to come back on the disability rolls. For these students, Social Security

does not make case-by-case likelihood determinations.

- If a Title II disability beneficiary performs SGA.
- If an SSI beneficiary loses cash payments for any reason other than work activity that fits the 1619(b) criteria.

Section 301 payments terminate effective with the month after the earliest of the following:

- The month that the individual completes the program;
- The month that the individual stops participating in the program for any reason; or
- The month that Social Security determines the individual's participation in the program will not or will no longer increase the likelihood that the individual will not return to the disability benefit rolls.

## **Appeals and Overpayments during Section 301 Status**

Section 301 determinations are subject to all of the usual appeal processes which apply to other Social Security determinations. Individuals may appeal the initial Section 301 determination made by the Office of Disability Operation (ODO) and may appeal the termination of Section 301 payments. In addition, individuals may appeal the original medical decision that preceded the Section 301 payments while receiving Section 301 payments.

Because Social Security doesn't effectuate medical evaluations while Section 301 determinations are pending, beneficiaries will continue to receive benefits until ODO makes a determination. A person who is overpaid because he/she received continued payments while awaiting a Section 301 determination can be found without fault for the overpayment if the person acted in good faith in believing he/she was participating in a qualified program and cooperated with Social Security's development of his/her participation. However, this doesn't mean that automatic waiver of overpayment recovery applies. Social security must still perform full waiver development. The following are examples of when a person may not have acted in good faith.

- The person knew he/she did not begin participating in a program before the medical cessation or that participation did not continue for at least two months after cessation.
- The person knew the program, or the services received under the program would not qualify for Section 301 benefits.

- The person did not cooperate with Section 301 development requests from Social Security and/or DDS.

If a good faith determination is needed, Social Security personnel are instructed to make sure they consider any physical, mental, educational, or linguistic limitations the person has which affects his/her ability to act in good faith.

## **Conclusion**

We provide information in this resources document to help CWICs gain a general understanding of the Section 301 provisions and how Social Security makes Section 301 eligibility determinations. It's important to remember that individuals who have been terminated from benefits due to medical recovery are not eligible for WIPA services and neither are individuals in Section 301 status. Your role related to Section 301 is to provide information and referral services to help beneficiaries understand their options if a medical CDR results in termination of benefits. Social Security doesn't permit CWIC employed by WIPA projects to assist individuals with requesting Section 301 continuation of benefits beyond the provision of basic information and referral services.

## **Conducting Independent Research**

DI 14500.000: [Continued Payments to Individuals Participating in a Vocational Rehabilitation or Similar Program - Table of Contents](#)

DI 14505.000: [Background of Continued Payments to Individuals Participating in a VR or Similar Program - Table of Contents](#)

DI 14505.001: [Background of Section 301 Payments to Individuals Participating in a Vocational Rehabilitation or Similar Program](#)

DI 14505.005: [Introduction to Section 301 Payments to Individuals Participating in a Vocational Rehabilitation or Similar Program](#)

DI 14505.010: [Policy for Section 301 Payments to Individuals Participating in a Vocational Rehabilitation or Similar Program](#)

DI 14510.000: [Procedures for Cases Involving Participation in a VR or Similar Program - Table of Contents](#)

DI 14510.003: [Field Office \(FO\) Procedures for Cases Involving Participation in Vocational Rehabilitation \(VR\) or Similar Program](#)

DI 14510.007: [Field Office \(FO\) Procedures for Section 301 Cases after Office of Disability Operations \(ODO\) Determination](#)

- DI 14510.010: [Disability Determination Services \(DDS\) Procedures for Cases Involving Participation in Vocational Rehabilitation \(VR\) or Similar Program](#)
- DI 14510.015: [Office of Disability Operations \(ODO\) Procedures for Determining Participation in Vocational Rehabilitation \(VR\) or Similar Program](#)
- DI 14510.020: [ODO Procedures for Making a Likelihood Determination](#)
- DI 14510.025: [Office of Disability Operations \(ODO\) Procedures for Processing Allowances, Closed Periods, and Denials of Section 301 Payments](#)
- DI 14510.030: [Office of Disability Operations \(ODO\) Procedures for Section 301 Post-adjudicative Actions](#)
- DI 14510.035: [Appeals Process for Cases Involving Section 301 Determinations](#)
- DI 14515.000: [Notices and Exhibits for Cases Involving Participation in a VR or Similar Program - Table of Contents](#)
- DI 14515.003: [Notices for Cases Involving the Issue of Participation in a VR or Similar Program](#)
- DI 14515.007: [Notices for Allowance of Section 301 Payments](#)
- DI 14515.010: [Notices for Denial of Section 301 Payments](#)
- DI 14515.015: [Notices for Termination of Section 301 Payments](#)
- DI 14515.020: [Exhibits for Cases Involving Participation in a VR or Similar Program](#)

*This document produced at U.S. taxpayer expense.*