



Understanding 1619(b)

January 2018 (This information is copied from Unit 1 of Module 4 in the 2018 WIPA Training Manual).

Introduction

Since 1987, Section 1619(b) of the Social Security Act has provided one of the most powerful work incentives currently available for SSI recipients. Section 1619(b) provides continued Medicaid eligibility for SSI recipients whose earned income is too high to qualify for SSI cash payments, but not high enough to offset the loss of Medicaid. Individuals who are eligible for Section 1619(b) don't receive SSI payments because their countable income is over the break-even point (BEP) after Social Security has applied all income exclusions and deductions. There's no time limit regarding 1619(b); a person can continue to use it as long as he or she continues to meet the eligibility criteria.

To benefit from the 1619(b) provisions, an individual must meet all five of the eligibility criteria described below. If at any point a beneficiary fails to meet one or more of these criteria, the individual won't be eligible for Medicaid coverage under the 1619(b) provision.

- 1. Eligible individuals must continue to meet the Social Security disability requirement.** Individuals in 1619(b) status continue to be subject to medical continuing disability reviews and must pass those reviews (not be found medically improved) to remain eligible. Because those in 1619(b) status aren't receiving an SSI payment, beneficiaries may assume that medical CDRs won't occur anymore. It's important to remind beneficiaries that they are still subject to those reviews and must respond to related paperwork in a timely manner. If a person turns 65 and elects to have his or her SSI based on age, rather than being based on disability or blindness, he or she won't be able to use 1619(b).
- 2. Individuals must have been eligible for a regular SSI cash payment based on disability for a previous month within the current period of eligibility.** This "prerequisite month" requirement simply means that 1619(b) isn't available to someone who wasn't previously eligible for SSI due to disability. Additionally, for those in 209(b) states, the

SSI beneficiary must have been eligible for Medicaid in the month immediately prior to becoming 1619(b) eligible.

3. Eligible individuals must continue to meet all other non- disability SSI requirements:

Countable resources must remain under the allowable limits of \$2,000 for an individual and \$3,000 for an eligible couple. In addition, countable unearned income must remain under the current Federal Benefit Rate (FBR). Finally, individuals must also meet all SSI citizenship and living arrangement requirements. All of these non-disability SSI requirements apply when Social Security initially establishes 1619(b) eligibility and remain in effect forever onward.

4. Eligible individuals must need Medicaid benefits in order to continue working. Social Security determines this “need” by applying something called the “Medicaid Use Test.” This “test” has three parts; a person only needs to meet one of the parts to pass. An individual depends on Medicaid coverage if he or she:

- Used Medicaid coverage within the past 12 months; or
- Expects to use Medicaid coverage in the next 12 months; or
- Would be unable to pay unexpected medical bills in the next 12 months without Medicaid coverage.

To make this determination a Social Security employee must call or meet with the recipient to ask questions related to the three parts listed above. A “yes” answer to any of the questions indicates that the person does need Medicaid in order to continue working. A “no” response indicates there are sufficient alternate sources available to the individual to pay for his or her medical care (e.g., comprehensive medical coverage through health insurance or membership in a health plan, access to other health programs). The Social Security employee makes initial Medicaid use determination at the time the individual reports earnings that will cause ineligibility for an SSI cash payment. Social Security personnel make subsequent Medicaid use determinations at each scheduled 1619(b) re-determination.

For more information about the Medicaid use test, refer to POMS SI 02302.040 The Medicaid Use Test for Section 1619(b) Eligibility

<https://secure.ssa.gov/apps10/poms.nsf/lnx/0502302040>

5. Eligible individuals can’t have earnings sufficient to replace SSI cash benefits, Medicaid benefits, and publicly funded personal or attendant care that they would lose due to their earnings. Social Security uses the “threshold” concept to measure whether an individual has sufficient earnings to replace these benefits. Social Security only looks at

gross earnings in making this threshold determination; it doesn't consider unearned income. Social Security makes the initial threshold determination at the time the individual reports earnings that would cause ineligibility for SSI cash payments (i.e., the break-even point). The agency makes threshold determinations for the 12-month period beginning with the month 1619(b) status begins and conducts them annually during the 1619(b) re-determination. In addition to the annual re-determination Social Security requires for 1619(b) cases, Social Security must verify earned income and exclusions from earned income at least quarterly. Local Social Security offices may choose to do this more frequently.

For more information about the threshold test, refer to POMS SI 02302.045 The Threshold Test for Section 1619(b) Eligibility:

<https://secure.ssa.gov/apps10/poms.nsf/lnx/0502302045>

1619(b) Threshold Amounts and How Social Security Determines Them

Social Security uses a threshold amount to measure whether an individual's earnings are high enough to replace his or her SSI and Medicaid benefits. This threshold is based on the amount of earnings that would cause SSI payments to stop in a person's home state and average Medicaid expenses in that state. Each state calculates its threshold in this manner:

1. Multiply the annual state supplementation rate (if any) by 2
2. Add to this the current annual SSI break- even point ($FBR \times 2 + \$85 \times 12$)
3. Add the average per capita Medicaid expenses by state
4. The total amount equals the state threshold amount

The current threshold amounts for each state are shown in the POMS at:

<https://secure.ssa.gov/poms.nsf/lnx/0502302200>

Social Security revises these charted threshold amounts on an annual basis. If Social Security determines the individual's countable earned income for the 12-month period is equal to or less than the threshold amount shown on the chart, he or she meets this threshold requirement.

1619(b) Individualized Threshold Amounts

If an individual has gross earnings above the charted threshold amount for the state, Social Security can look to see if the agency should calculate a higher individualized threshold. A

person may get a higher individualized threshold amount if he or she has above-average Medicaid costs. The objective of the individualized threshold calculation is to determine if the individual has earnings sufficient to replace all the benefits that he or she would actually receive in the absence of those earnings. Obviously, for individuals with unusually high Medicaid costs, they would need a higher amount of earned income to replace the Medicaid coverage.

In addition, when Social Security is evaluating income for threshold determinations, it's required to consider any Impairment Related Work Expenses (IRWE) or Blind Work Expenses (BWE) the person has, as well as income excluded under an approved PASS. In some instances, applying these income exclusions may lower countable income below the standard threshold amount, thus allowing an individual to retain Medicaid eligibility under 1619(b) even though gross earnings exceed the state's charted threshold amount.

Finally, Social Security considers the value of publicly funded (other than Medicaid) personal or attendant care the individual receives when making a threshold determination. Social Security recognizes that some SSI recipients may require attendant care services to assist with essential work-related or personal care functions. For purposes of determining Section 1619(b) eligibility, attendant care (including personal care and other domestic assistance and supportive services) means assistance with:

- Work-related functions; and
- Personal needs such as bathing, communicating, cooking, dressing, homemaking, eating, and transportation, regardless of whether such needs are work-related.

Social Security considers the cost to the governmental entity for providing such services when performing the individualized threshold calculation if:

- A person paid under a publicly funded program other than Medicaid provides or provided assistance; and
- The SSI individual would no longer qualify for attendant care service due to earnings of an amount that causes ineligibility for SSI benefits.

Social Security assesses Medicaid expenses and attendant care or personal care costs used in making individualized threshold determinations for the 12-month period preceding the determination.

For more information about individualized threshold determinations, refer to POMS SI 02302.050 Individualized Threshold Calculation:

<https://secure.ssa.gov/apps10/poms.nsf/lnx/0502302050>

You will find an individualized threshold calculation worksheet Social Security personnel use to make these determinations at POMS SI 02302.300 Individualized Threshold Calculation Worksheet – Exhibit:

<https://secure.ssa.gov/apps10/poms.nsf/lrx/0502302300>

How Social Security Counts Earnings during 1619(b) Threshold Determinations

Social Security makes threshold determinations prospectively for the month period beginning the month 1619(b) status begins — meaning when the person first hits the break-even point and SSI cash payments cease. Social Security personnel estimate future earnings using the standard procedures described in POMS SI 00820.150 - Estimating Future Wages. If the beneficiary has estimated annual earnings under the current threshold amount and meets all other eligibility requirements, Social Security will find the person eligible for 1619(b). If estimated earnings are over the standard state threshold amount, the Social Security employee checks to see if he or she can establish an individualized threshold amount. When estimating future earnings, Social Security generally uses the amounts the beneficiary earned in the past few months, which are often the best guide. However, Social Security may consider any indication given by the recipient that he or she anticipates a change in earnings.

Social Security reviews earnings annually during the 1619(b) re-determination, as it does all other forms of unearned income, resources and other relevant eligibility information. In addition to the annual re-determination required for Section 1619(b) cases, Social Security must verify earned income and exclusions from earned income at least quarterly, although local Social Security offices may choose to do this more frequently. It's important to reassure recipients that Social Security doesn't re-determine 1619(b) eligibility under the threshold test each quarter; the agency merely verifies earnings against the original estimate. However, if during these quarterly evaluations the annual estimate for the upcoming 12-month period exceeds the current threshold amount, and if there is no indication that an individualized threshold is in order, eligibility for 1619(b) may stop. If Social Security finds an individual ineligible for 1619(b) because of excess income (earned or unearned) or resources, Social Security doesn't terminate the individual, but the individual goes into a 12-month suspension period. If the individual can re-establish eligibility again within this 12-consecutive-month period, Social Security may reinstate benefits again without the individual filing a new application.

Other Benefits of 1619(b)

As a work incentive, Section 1619(b) preserves Medicaid coverage for SSI recipients whose earnings cause total countable income to go over the break-even point. This is an exceptional benefit, but 1619(b) offers more than this.

For example, 1619(b):

- Allows eligible recipients to receive an SSI cash payment in any month in which countable income falls below the break-even point;
- Enables people who are ineligible for 1619(b) because earnings exceed the 1619(b) earning threshold to get SSI cash payments again if earnings fall below the break-even point within 12 months;
- Allows people who are ineligible for 1619(b) because earnings exceed the 1619(b) threshold amount to regain Medicaid eligibility if earnings drop below the threshold amount within 12 months; and
- Enables people whose eligibility (including 1619(b) eligibility) Social Security suspends for less than 12 months to be reinstated to cash benefits or 1619(b) status without a new application or new disability determination.

1619(b) in 209(b) States

As mentioned before, certain states (referred to as 209(b) states) have their own eligibility criteria for Medicaid. Many 209(b) states have a more restrictive definition of disability than that of the SSI program. Individuals who are eligible under 1619(a) or 1619(b) status and reside in a 209(b) state can retain their Medicaid eligibility (as long as they meet all 1619 requirements) provided they were eligible for Medicaid in the month prior to becoming eligible for 1619 provisions. The state must continue Medicaid coverage so long as the individual continues to be eligible under section 1619(a) or (b).

1619(b) for Eligible Couples

There are some important details about 1619(b) and married couples that CWICs should be aware of. For the purposes of SSI, an eligible couple exists when two SSI recipients are married to each other or are holding themselves out as married to the local community. For more information about how Social Security determines when an eligible couple exists, refer to Unit 5 of Module 3 in the current WIPA Training Manual.

If both members of the eligible couple are working, both can get 1619(b) protection. For 1619(b) to apply to both members of the couple, it doesn't matter how much either person is earning. One person may even be earning less than the \$65 earned income exclusion. If both members have earned income at some level, both may be eligible for 1619(b). In addition, the threshold amount applies to each member of the couple individually. In other words, each member can earn up to the state charted or individualized threshold amount and remain in 1619(b) status. Unfortunately, if only one member has earned income, 1619(b) can only apply to that one person, not the unemployed spouse. Because 1619(b) is a work incentive, it's only available to persons who are working. This means that the working spouse will receive 1619(b), so Social Security will terminate the non-working spouse from the SSI-related Medicaid eligibility group (unless Social Security finds him or her eligible under a different Medicaid eligibility group).

Keep in mind that an SSI recipient who marries an ineligible spouse will be subject to all applicable income and resource deeming rules. If the ineligible spouse's income causes the eligible spouse's SSI to drop to \$0, 1619(b) won't be an option for that SSI eligible spouse. The SSI eligible spouse must be ineligible for SSI solely due to his or her own earned income.

1619(b) Eligibility and Redeterminations

Social Security is responsible for determining whether a person meets the 1619(b) eligibility criteria. The process can and should occur when the beneficiary starts reporting earned income to Social Security. Once the Social Security employee makes a determination, he or she must enter a special code on the SSI record to note the beginning of 1619(b). The steps that follow vary depending on whether the person is in a 1634 state, a SSI Criteria and Eligibility state, or a 209(b) state.

- **1634 State:** Because Social Security's SSI eligibility determination serves as the Medicaid eligibility determination, Medicaid simply continues when Social Security finds the person eligible for 1619(b). If the agency finds the person ineligible for 1619(b), it will send a letter with appeal rights.
- **SSI Criteria Eligibility and 209(b) States:** Because the state Medicaid agency or its designee determines Medicaid eligibility for SSI recipients in these states, the process differs from that of 1634 states. The state Medicaid agency and Social Security share data through a shared data system known as the State Data Exchange (SDX). When the Social Security enters the special code on the beneficiary's record noting 1619(b) status, the Medicaid eligibility worker will be able to see that code. When the beneficiary reports his or her earnings to the Medicaid agency, the Medicaid eligibility

worker will need to look in the data system to see that Social Security has made a 1619(b) determination for that person. With that coding in place, the Medicaid eligibility worker can continue the person's eligibility. If there is no coding indicating that Social Security made a 1619(b) determination, or if the worker isn't familiar with the code, the Medicaid worker will generally issue a Medicaid termination notice, which will come with appeal rights.

Once Social Security determines a person is eligible for 1619(b), the agency will conduct annual re-determinations. Social Security conducts these re-determinations to ensure that individual continues to meet the 1619(b) eligibility criteria.

