

DAP BASICS: WHAT IS SGA?

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WHAT IS SGA?

- “Substantial Gainful Activity” is defined by Congress on a yearly basis
- Earnings of \$1,350 [2022] per month gross or more presumed to be SGA
 - \$1,470 [2023]
 - Indexed since 2000 on National Wage Index
 - 20 CFR §§ 404.1574(b)(2)(ii) & 416.974(b)(2)(ii)
 - POMS § DI 10501.015
- SGA assessment at Step 1 applies to both Title II (SSD) and Title XVI (SSI) applicants.

REBUTTING SGA

- SGA issues can be critical to claims
- Challenge for advocate?
 - Demonstrate that post-onset earnings are not high enough to preclude eligibility at Step One
- How? Know the rules!
 - SGA levels
 - Subsidies
 - IRWEs
 - UWAs
 - Etc.

SGA-SUBSIDIES

- DI 10505.010 Determining Countable Earnings
- Indications of subsidy
 - Marked discrepancy between pay and value of services
 - Allegations that employee does not earn full pay/gets help from others
 - Have employer complete SSA-3033-BK?
 - Have employee complete SSA-821-BK
 - <https://www.ssa.gov/forms/ssa-821.pdf>

SGA – SHELTERED WORK

- “Sheltered” employment generally not SGA
 - DI 10505.025D
 - Institutional programs for severely impaired person
 - But earnings must be below SGA limits

SGA- PART TIME WORK

- SUBSTANTIAL GAINFUL ACTIVITY (SGA)
 - 20 C.F.R. §§ 404.1510, 1572; & 416.910, 972
 - Involves significant physical or mental activities
 - Usually for pay (cash or in-kind) or profit
 - Can be part-time

SGA - IRWEs

- Income Related Work Expenses
 - DI 10520.000 et seq.; 20 C.F.R. 404.1576 & 416.976
 - Cost of certain items and services needed in order to work can be deducted from earnings to determine SGA, even though such items and services are also needed for normal daily activities.
 - Certain attendant care services
 - Medical devices
 - Equipment
 - Prostheses
 - Must be paid out of pocket by claimant
 - Need receipts!

SGA- JOB COACH

- POMS DI 10505.010.A.4
- “Special conditions” such as job coaches are not technically subsidies but may affect value of work and SGA
 - For SGA, count only earnings based on individual's own productivity
 - Salary of job coach is NOT considered in determining subsidy
- Job coaching/substitution vs. close supervision
 - May not affect SGA but relevant at Step 5?

SGA- THERAPY, ETC.

- Activities involving self-care, household tasks, unpaid training, hobbies, therapy, school attendance, clubs, social programs, etc., are generally NOT considered SGA
 - POMS DI 10501.001, et seq.

SGA – TRAINING PROGRAMS

- Stipends received in designated volunteer programs are not considered earnings
- Work activity in other government sponsored training or employment program must be evaluated for “countable earnings”
 - DI 10505.025A
 - Determine whether subsidies or IRWEs exist

SGA- SELF EMPLOYMENT

- Evaluate “Net Earnings from Self Employment” (NESE)
 - POMS DI 10510.012
 - Determine business revenue
 - Subtract actual business expenses
 - Net Business Income (Can be taken from IRS Schedule C)
 - Deduct IRWEs
 - Deduct unpaid help and other services provided without charge by third party individuals and agencies

SGA – SICK AND VACATION PAY

- Only earnings from actual work activity count in determining SGA
 - Sick or vacation pay for non-work hours should not count as income
 - DI 10505.010.C
- Bonus and incentive pay is countable
 - DI 10505.010.D
- Pre-tax cafeteria payments are countable
 - DI 10505.010.E

SGA – INCOME AVERAGING

- 20 C.F.R. 404.1574a; 416.974a; POMS DI 10505.015
- Average earnings to determine SGA if:
 - Work was continuous without significant change in earnings
 - SGA level has not changed
 - Earnings fluctuate monthly from above to below SGA threshold
- Average earnings over continuous period unless significant change in hours, position, or earnings
 - Significant change marks beginning and end of averaging period

SGA- UWA

- Unsuccessful Work Attempt (UWA)
 - DI 24005.001; DI 11010.145
 - Employment or self-employment that discontinues or reduces to the non-SGA level after a short time of no more than 6 months
 - Prior to November 2016, work that lasted 3-6 months was considered in certain circumstances
 - See SSR 84-25
- UWA can be established before or after alleged onset date (AOD) and Established Onset Date (EOD)
 - DI 25501.390.A.5

UWAs – cont'd

- UWA must be preceded by a significant break in continuous work
 - Out of work for at least 30 consecutive days
 - On rare occasions, less than 30 days if the subsequent work episode was brief and clearly unsuccessful because of the impairment
 - Or forced to change to another type of work or another employer because of the impairment
- Must be followed by a significant break (see above)
 - DI 24005.001

UAWs – cont'd

- UWA ends because of the impairment or the removal of special conditions
 - Special assistance from other employees
 - Allowed irregular hours or special breaks
 - Special circumstances
 - Permitted to perform at lower productivity or efficiency
 - Family relationship or past association with or altruism of employer
- DI 11010.145.F

SGA – TWP

- TWP (Trial Work Period)
 - 20 C.F.R. 404.1592; DI 13010.035
 - TWP allows Title 2 recipients to test ability to work; does not apply to SSI
 - TWP begins in the month in which disability entitlement begins
 - TWP ends after nine months, within 60-month rolling period
 - 2022 TWP earnings threshold = \$970
 - Increase to \$1,050 in 2023

SGA – ILLEGAL ACTIVITY

- Illegal activity as SGA?
 - Illegal activity, such as theft, to support a \$200-300 per day drug habit can be SGA
 - Dotson v. Shalala, 1 F.3d 571, 576 (7th Cir. 1993)
 - SSR 94-1c

SGA AT STEP FOUR

- Past work must have been SGA to be considered past relevant work (PRW) at Step four of the Sequential Evaluation
 - POMS DI 25005.015.C
- See Working Your Way Through the Sequential Evaluation – Sept. 2021
 - Available at <https://empirejustice.org/training/>