

Evaluating Work Activity

SGA Determination - Self-Employment

To determine Non-SGA or SGA self-employment requires the same evaluation of work activity.

From the Redbook

A self-employed person's work is SGA if:

- He/she renders significant services to the business, AND receives the SGA level average monthly income (\$810 a month in 2004), or
- The self-employed person's work is comparable to the work of unimpaired people in the community engaged in the same or similar businesses; or
- The self-employed person's average monthly work is worth the SGA level earnings in terms of its effect on the business, or when compared to what he/she would have to pay to an employee to do the work.

From POMS

A self-employed person will have a substantial income from a business if:

- a. "Countable income" from the business averages more than the primary amount shown in the SGA Earnings Guidelines (\$830 a month in 2005), or
- b. "Countable income" from the business does not average more than the amount referred to above, but the livelihood which he or she derives from the business is:
 1. Comparable to that which he or she had before becoming disabled, or
 2. Comparable to that of unimpaired self-employed individuals in his or her community engaged in the same or similar businesses as their means of livelihood.

To determine if a self-employed person is engaging in SGA, we need to determine net income. Net income equals the gross income minus all allowable IRS business deductions. To verify net income we request the tax return including Schedule SE and C or F. Once the taxable net income is determined, apply all applicable SGA adjustments, such as IRWE, averaging, UWA and un-incurred business expenses to determine the countable earnings. Unpaid help may be a factor. If it is, we need an estimate of the reasonable value of any significant unpaid help. This help would be of a nature to which commercial value would ordinarily be assigned. Un-incurred business expense and unpaid help will be covered in this section because these

adjustments relate directly to adjustments made to self-employment countable income when determining SGA.

Be alerted to the possibility of the business being incorporated and request the necessary returns (both business and personal tax returns). If an individual is being paid by the corporation, he or she is considered an employee and receiving wages.

In self-employment cases, consideration must be given to the individual's activities and their value to a business. The earnings level alone in self-employment is not a reliable factor in determining SGA. An individual may receive substantial income from a business while performing little or no work. Conversely, little income may be received for a great deal of work. A self-employed individual will be considered to be performing SGA if his/her work *activity* compares to any of three tests.

There are three separate tests to determine if SE is SGA. You can stop after any test that proves SGA, but cannot make a determination that activity is NOT SGA without completing all three tests. If the answer to all three tests is NO, we can make a determination of not engaging in SGA.

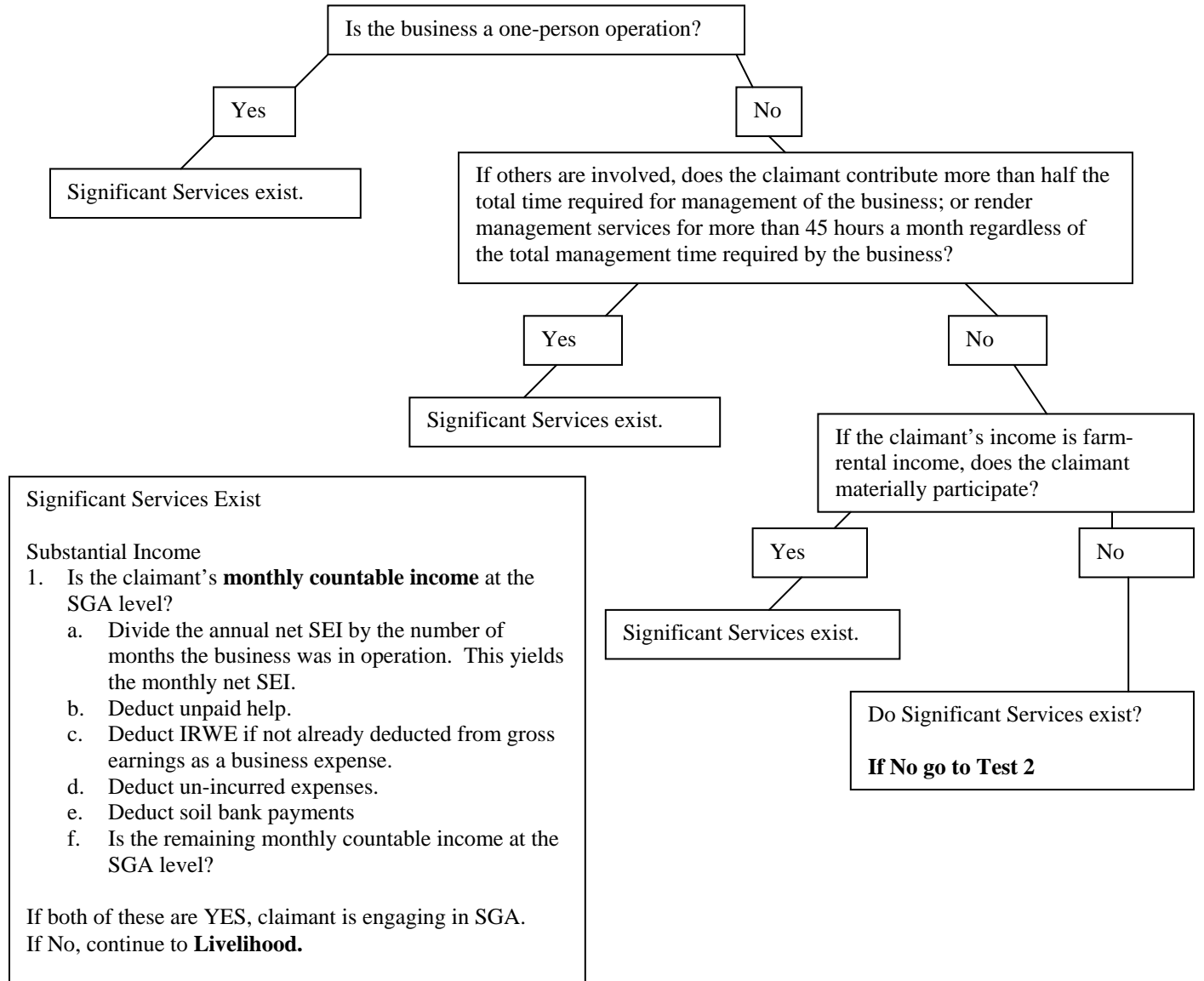
It is important in the development of SGA to address each factor involved, before it can be determined that SGA is not being performed.

Tests for Self-Employment

- **Test One:** Significant Services *and* Substantial Income and comparability of personal/community standards of livelihood
- **Test Two:** Comparability of Work Activity
- **Test Three:** Worth of Work

SEI FLOWCHART

Test 1 – BOTH Significant Service and Substantial Income

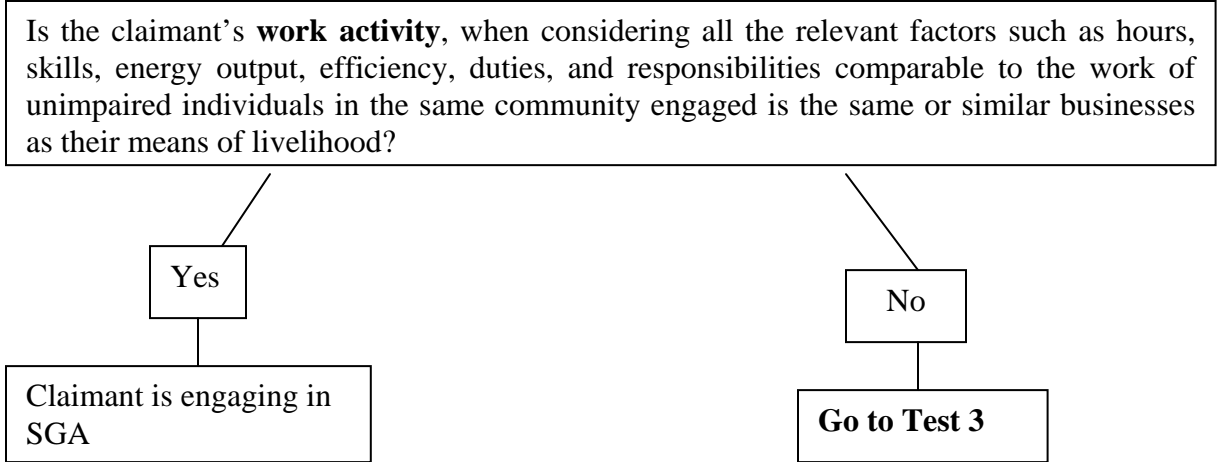


1. Is the claimant's **livelihood** comparable to that which s/he had before becoming disabled?
If the self-employment activity started after the alleged onset date, go to next question below.
If the business existed prior to that time, get tax returns for all years that the business existed within 5 year period prior to the alleged onset date.

- a. Compare the gross income and expenses for the period prior to and following the alleged onset date. Use this as an indicator of any changes in the volume of sales and services, scope of the operation, and employee salaries.
- b. Compare the claimant's services and duties for the period prior to and following the alleged onset date.
- c. Compare the number of employees/helpers and their duties for the period prior to and following the alleged onset date.
- d. Are there substantial differences in gross income, expenses, or the operation of the business for the period prior to and following the alleged onset date?

2. Is the claimant's **livelihood** comparable to that of unimpaired self-employed persons in the community engaged in the same or similar businesses as their means of livelihood? If Yes, claimant is engaging in SGA. **If No, go to Test 2**

SEI FLOWCHART Test 2 -- Comparability



SEI Flowchart Test 3 – Worth of Work

Is the claimant's **work activity** clearly worth more than the SGA primary amount when considered in terms of its value to the business or the salary an owner would pay an employee for such duties that business setting?

- a. Consider the average hours worked per month.**
- b. Multiply by the hourly rate of pay ***
- c. Determine the worth of work.
- d. Is c. above the SGA level?

If Yes, Claimant is engaged in SGA.

If final answer on all 3 tests is No, Claimant is not engaging in SGA.

- Livelihood is the means of support or subsistence, the economic value of claimant's situation. This would include countable income plus anything else of economic value.

**Consider only the months the business is in operation. Do not average in zero hours for the months the business was not in operation.

***If the job is other than unskilled labor, call the state employment service or a company or self-employed individual in the same business. Ask what they would pay someone to do this kind of work. They may ask how many years of experience, what training, and what skills the person has before they can give you an hourly wage. Be prepared. An apprentice gets less than a journeyman, and different skill levels get paid differently. The economy will also affect wages and worth. The Department of Labor has wage charts by profession and region that can be used for documentation: <http://www.bls.gov/bls/blswage.htm>

SGA Self-Employment Example

The Facts: Mr. Barton was self-employed as a carpet cleaner prior to becoming disabled. After two years, he is once again self-employed as a carpet cleaner. He advertises in local newspapers and has enough business to work about 100 hours per month. Because of recent purchases of new equipment and repairs to his van, his net earnings have been less than \$800 per month.

By interviewing Mr. Barton, we learn that prior to his disability he was working 60 hrs a week making all management decisions. He cleaned carpets under commercial contracts for property management firms. He also did specialty cleaning of industrial stains which involved a higher level of skill. His tax returns (prior to becoming disabled) indicate an average net income of \$130,000. Currently Mr. Barton averages 25 hours per week, relying on calls from his newspaper ads and only cleans carpets for private residences. He nets less than \$800 per month.

Other carpet cleaners have earnings similar to what Mr. Barton earned previously, before becoming disabled. They are able to work full time, at the minimum. Use the flowcharts to make your decision.

Test One: Although Mr. Barton is a one-person business (meeting “significant services”) his countable earnings do not indicate SGA. We must now consider if his livelihood compares to that which he had before becoming disabled. Compare his gross income and expenses for the period prior to the onset date. Use this as an indicator of any changes in the volume of sales and services. Then compare his services and duties for the period prior to and following onset. Compare the number of employees/helpers and their duties. Are there substantial differences in gross income, expenses, or the operation of the business now? (**Livelihood**) Based on the information provided by Mr. Barton, his current livelihood is not comparable. **He does not meet Test One of SGA.**

Test Two: Is his work activity, when considering all the relevant factors such as hours, skills, energy output, efficiency, duties and responsibilities comparable to that of unimpaired individuals in the same community engaged in the same or similar businesses as their means of livelihood? To determine this, contact other self-employed carpet cleaners. Check financial reports comparing different businesses. Make a comparison between what Mr. Barton does and what the unimpaired person working in the same or similar business is able to do. Mr. Barton’s work activity does not compare to unimpaired individuals. **He does not meet Test Two.**

Test Three: Although Mr. Barton does not work at the level he did before, the **worth of his work** must be evaluated. Is his work activity clearly worth more than the SGA amount in terms of his value to the business? He has had recent purchases of new equipment for his business and repairs to his van which is keeping his net profit under SGA. We would need to consider the worth of his activity. More development is needed per DI 10510.020ff. By making calls to similar businesses in the community, we find that Mr. Barton is doing work similar to a carpet technician who earns \$7.00

an hour in the community. (\$7.00 multiplied by 25 hours a week multiplied by 13/3 weeks = \$758.30) **We can determine that Mr. Barton does not meet Test Three and is not engaging in SGA.**

If you are determining that self employment activity is not SGA, address each test in your decision and provide documentation for each test.

The next section discusses Un-incurred Business Expense and Unpaid Help. These expenses can reduce SE countable income below SGA.

Un-incurred Business Expenses

- For **self-employed** only
- Contributions made by others to the business
- Provided by someone **other than** individual receiving benefits

Un-incurred business expenses are for self-employed individuals only. These are contributions made by others to the business. These are items or services that the IRS would normally allow as a business expenses. Examples would be: a computer, office space or paid help. However, as un-incurred business expenses these expenses are provided or **paid for by someone other than the individual receiving benefits.**

Remember: An item claimed as a business expense on tax returns cannot be excluded as an un-incurred business expense.

Documenting Un-incurred Business Expenses

- Name and relation of person providing item/services
- Full account of item/services provided
- Reason item/services provided
- Value of item/services
- Time period provided

Unpaid Help

Documenting Unpaid Help

- Name and relationship of person providing free service
- Reason unpaid help furnished
- Services rendered, time furnished and length of arrangement
- Reasonable value of services

If unpaid help is a factor in developing SEI we must document certain information to determine the reasonable value of any significant unpaid help. The SSA 820 will serve as documentation.

Remember: If unpaid help provided by spouse or minor child, evaluate how their previous pattern of activities affected.

For example:

Mary Ann Lowe operated a fruit stand by herself. After an accident in May she required assistance to unload and stock produce. Her nephew did this work 10 hours per week without pay. Such part-time help would normally cost \$5.35 per hour. Mary received \$53.50 worth of unpaid help per week. Mary's net income from May through December (34 weeks) was \$6,250. After deducting the value of the unpaid help, her countable income was \$4431. Her average income was \$130.32 a week, or about \$564 per month over the 8-month period.

Another example:

Mary Ann Lowe in addition to operating a fruit stand raises a small flock of chickens and sells the eggs. Her son, Goober, age 14, as part of his chores has been feeding the chickens since age 6.

It is clear that the help Goober renders consists of miscellaneous duties carried on in connection with general activities of the household. Therefore, no estimate of value will be necessary.

Intermediate Level Earnings

An SGA determination is made by looking at how much a person is earning. Evaluation of an employee's work activity for SGA purposes is concerned with only those earnings which represent a person's own productivity.

SGA/Primary Amount – Earnings which exceed the primary amount are considered to be SGA. Please note – beginning 01/01/2001, the SGA amount will continue to be adjusted and changed each year based upon the average wage index.

Example – In the year 2004, if a person had “countable earnings” higher than \$810.00 in a month, those earnings would be considered to be SGA.

Not SGA/Secondary Amount – As of 01/01/2001, the secondary amount has been eliminated. After that date, a person's earnings are either below or above SGA levels. Prior to 01/01/2001, earnings that were under the secondary amount limit were not considered to be at SGA levels.

Example– In the year 1999, if a person had “countable earnings” lower than \$300.00 in a month, the earnings would **not** be considered to be SGA.

Earnings between the Primary and Secondary Amounts – If you need to evaluate earnings before 01/01/2001 that fall in between the Primary and Secondary amounts, you will need to make a decision regarding the person’s work activity. You will need to answer several questions:

1. Are the person’s work activities/duties comparable to those of unimpaired individuals doing the same sort of work in the same community – even though he or she is being paid less?
2. Is the person’s work clearly worth more than the SGA/Primary Amount, even though he or she is receiving a smaller income?
3. Is the person in a position to defer or delay receiving his or her compensation from work until a later date – thereby avoiding earning SGA until after SSA has made a decision on the disability application?

If you have a “yes” answer to any of these questions, a finding of SGA may be possible, even though the monthly payment amount may not appear (on the surface) to exceed SGA limits. Further development is needed. If further development is needed, the tests of Comparability and Worth of Work should be considered before making a decision that the work is not SGA.

Note: Development may not be needed if there is a reasonable explanation for the reduced earnings. A reasonable explanation might simply be that the person may not be able to perform all necessary job duties; or he or she is working part-time due to health-related limitations.

Comparability Test

Compare the impaired person’s work activities to those of unimpaired individuals from the same community who are currently earning their living from that line of work. If it is found that the impaired person is working the same job, the same number of hours and performing similar duties as the unimpaired person, then it will be found that the applicant is working at SGA levels even if the monthly earnings are below the SGA/Primary earnings level.

Worth Test

If the individual’s work is not comparable to the work of unimpaired individuals, determine if the value of the work being performed is clearly worth more than the SGA limit.

Documentation

Documentation of Comparability and Worth of Work should consist of:

1. The person’s description of his or her work activities; and
2. A statement from a knowledgeable source about how the work is being performed by an unimpaired individual in the community.

The knowledgeable source could be an employer or a local job service. (That statement should include the time, energy, hours, duties, responsibilities and the actual value of the individual's work.)

Applicability of Tests

A finding of SGA will not be found if there is a reasonable explanation as to why the individual's earnings are not substantial or why the rate of pay is not worth more. When the file adequately explains why an employee's earnings are not substantial and there are no indications that the comparability and worth of work tests could be met, development is not required. The file must clearly reflect why development under these two tests was not undertaken.

Blind SGA Earnings Guidelines

Blind SGA Amount – Blind individuals have always had only **one** SGA limit each year. This chart can be found in [DI 24001.025B](#).

Example – In the year 2004, if a blind individual had “countable earnings” higher than \$1350.00 in a month, the earnings would be considered to be SGA that month.

Unsuccessful Work Attempt

An unsuccessful work attempt (UWA) is an effort to do substantial work (SGA) in employment or self-employment which stopped or was discontinued or reduced to the a non-SGA level after a short time (no more than 6 months) because of the individual's impairment or due to the removal of special conditions given at the workplace.

Events that Must Precede a UWA

There must be a significant break in the person's work before he or she can be considered to have begun a work attempt that later proves unsuccessful. The break or interruption in work must occur because of the disability. Work may also stop because the special work conditions that once helped a person keep the job despite their limitations are now gone. A significant break would exist if the person is:

- out of work for at least 30 consecutive days; or
- forced to change to another type of work or go to another employer;
or
- markedly reducing the extent of work activity in his or her regular employment.

UWA Requirements

Work Effort Lasting 3 Months or Less:

To qualify as a UWA, the work must have ended or the earnings were reduced to non-SGA levels within 3 months; **and** the work needs to have ended due to the:

- Disability, or
- The removal of special work conditions which would have helped the person continue working.

Work Effort Lasting More Than 3 Months But Not More Than 6 Months:

If work lasted longer than 3 months but not more than 6 months and again ended due to the disability or due to the removal of special work considerations, a UWA may be possible **if one of the following is also true:**

1. There were frequent absences from work due to the disability; or
2. The work was unsatisfactory due to limitations from the disability;
or
3. The work was done during a period of remission; or
4. The work was done under special conditions arranged with the employer.

Work Effort Lasting Over 6 Months:

Work at SGA-levels that lasts longer than 6 months cannot be a UWA regardless of why it ended or why income dropped below SGA levels.

NOTE: Seasonal or recurring work should not be regarded as a series of UWAs since each period of work ended due to reasons unrelated to the impairment.

Example 1: Beau Archer is filing for disability benefits. He says he has been unable to work since 1/02 when he suffered affects from a stroke. He currently is feeling better and has returned to work for a large sporting goods store. He receives a gross salary of \$1000.00/month. He started the job 2/15/2003. As of 5/15/03, he had to quit because of complications from his stroke.

Question: Does this qualify as a UWA?

Answer: Yes, because Beau was off of work for over 30 days prior to starting his new job, his SGA earnings lasted only 3 months, and he left the job due to his disability.

Example 2: Ann Teak is filing for disability benefits. She developed cancer in her lymph glands and has not worked since 5/10/02. She was previously working full time at a large manufacturing plant. After undergoing a series of treatments, Anne felt well enough to go back to work. She worked full time from 11/01/02 through 3/31/03 and earned \$950.00/month. She hasn't worked since 03/03/03. Her insurance paid all medical expenses.

Question: Does this qualify as a UWA?

Answer: Yes. Even though Anne worked at SGA levels for 5 full months, her work ended due to her disability, there was a significant break in employment before her return to work, and her work was being done during a period of remission.

DDS DDS/FO Role

The FO makes a recommendation regarding the existence of a UWA on the last page of the SSA-821 or SSA-820. **However, DDS has the final authority regarding the existence of a UWA in initial claims.**

In work CDR situations where there will be no medical issues involved, the FO takes the final responsibility in deciding if a UWA exists. UWA criteria do not apply in determining whether payment should be made for a particular month during the reentitlement period after disability has ceased because of SGA.

Averaging

Averaging does not apply during the TWP or after disability has been ceased because of SGA (i.e., in EPE after cessation month)

Most impaired employees who work do so at a single, ongoing job with a regular pattern of weekly (biweekly, monthly) earnings. In these cases earnings are uniform, so the averaging of earnings is not necessary. However, when an employee's earnings or work activities vary from month to month, it may be necessary to average "countable earnings" reported over a number of months in order to compare those earnings with the applicable monthly amount in the Earnings Guidelines.

Generally, "countable earnings" are averaged over the entire period of work requiring evaluation. However, it is necessary to average separately the distinct periods of work involved when there is a regulatory change in the SGA earnings level or there is a significant change in work patterns or earnings.

The averaging policy explained herewith is to be used in initial disability cases. It is also to be used in continuing disability cases in determining whether, because of work activity, disability continues or ceases. However, earnings are not averaged in determining

whether payment should be made in a particular month during the reentitlement period following the TWP after disability has been ceased because of SGA.

Example – When earnings are averaged over the entire period of work.

Mrs. A. filed a claim in September 1982. She alleged that her onset date of disability was December 1981, when she had a heart attack. Until that time, she was earning \$12,000 a year. She worked from January 1982 to August 1982 doing part-time clerical work, and she had the following earnings:

January	\$305
February	\$290
March	\$305
April	\$290
May	\$305
June	\$290
July	\$305
August	\$290
	$\$2,380 \div 8 = \297.50

In this example, the "actual period of work involved" is the 8-month period from January through August. During this period neither of the qualifying situations occurred: there was no real change in work pattern or earnings, and the SGA earnings level (i.e., over \$300 a month) was applicable during the entire period of work. The entire 8 months of earnings are, therefore, averaged.

Example – When earnings are averaged over a separate period of work.

Mr. C., who is 35 years old, filed a title II disability application in March 1982. He alleged that his onset date of disability was January 1981 due to blindness. He began working in September 1981 and was still working when he filed his application in March 1982. He had the following earnings:

September	\$475
October	\$475
November	\$475
December	\$475
January	\$475
February	\$475

In this example, work beginning September 1981 and continuing needs to be considered. Different SGA earnings levels apply during the period of work under consideration. The SGA earnings level for title II blind individuals was \$459 in 1981 and \$500 in 1982. The adjudicator, therefore, cannot conclude that since the earnings over the entire period averaged less than \$500 (the 1982 level), the whole period of work is not SGA. For example, if the claim had been filed in November 1981 and adjudicated then (at which time the earnings averaged \$475 and the SGA level was \$459) rather than in March 1982, the work would have to have been considered to be SGA. The only reason for concluding that the same work for the same earnings is no longer SGA is because of the higher earnings guide, i.e., \$500. However, the \$500 level applies only to work beginning in 1982. Therefore, in the above example, work through December 1981 should be considered SGA, and work beginning January 1982 should not be considered SGA.

NOTE: Cases must be diaried for future investigation when, at the time of allowance or continuance, there is an indication that the work pattern or earnings may change from non-SGA to SGA.

SSA Policy Site: POMS Section DI 24001.025

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TN 4 (04-02)

DI 24001.025 Substantial Gainful Activity (SGA) Earnings Guidelines and Evaluation of Earnings and Income

A. POLICY - SGA EARNINGS GUIDELINES

In deciding whether work is SGA all pertinent facts about the individual's work are considered, such as the nature of the duties, hours worked, productivity, pay, and any other factors related to the value of the services. Usually, the best gauge of a person's ability to work is the amount of pay received. In deciding whether the person is performing SGA, only the pay that has been earned through a person's own effort is counted. If, for example, it is necessary for an employer to provide special help for an individual to work, the value of such special assistance may be considered a subsidy. As such, only these earnings that are based on the individuals own productivity are used in determining total earnings. Additionally, impairment-related work expenses incurred by a disabled individual will be deducted from earnings before determining whether the SGA level is met.

B. POLICY - SGA EARNINGS GUIDELINES AND EFFECTIVE DATES BASED ON YEAR OF WORK ACTIVITY

1. Blind¹ and Non-Blind Individuals Before 1978

<p>For month(s):</p>	<p>“Countable earnings” of employees indicate SGA and “countable income” of the self-employed is “substantial” if the amount averages more per month than the (primary) amount of:</p>	<p>“Countable earnings” of employees usually do not indicate SGA if they average less per month than the (secondary²) amount of:</p>
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In calendar years before 1976	\$200	\$130
In calendar year 1976	\$230	\$150
In calendar year 1977	\$240	\$160

¹ SGA earnings guidelines apply to blind title II individuals only; blind individuals under title XVI are not subject to any SGA limitations.

² The lower (secondary) apply only to employees, not to self-employed individuals.

2. Non-Blind Individuals Only

For month(s):	“Countable earnings” of employees indicate SGA and “countable income” of the self-employed is “substantial” if the amount averages more per month than the (primary) amount of:	“Countable earnings” of employees usually do not indicate SGA if they average less per month than the (secondary ²) amount of:
In calendar year 1978	\$260	\$170
In calendar year 1979	\$280	\$180
In calendar years 1980-1989	\$300	\$190
In 1/90-6/99	\$500	\$300
7/99-12/00	\$700	\$300
In calendar year 2001	\$740	Discontinued
In calendar year 2002	\$780	Discontinued
In calendar year 2003	\$800	Discontinued
In calendar year 2004	\$810	Discontinued
In calendar year 2005	\$830	Discontinued

3. Blind¹ Individuals Only

For calendar years:	“Countable earnings” of employees indicate SGA and “countable income” of the self-employed is “substantial” if the amount averages more per month than the (primary) amount of:
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1978	\$ 334
1979	\$ 375
1980	\$ 417
1981	\$ 459
1982	\$ 500
1983	\$ 550
1984	\$ 580
1985	\$ 610
1986	\$ 650
1987	\$ 680
1988	\$ 700
1989	\$ 740
1990	\$ 780
1991	\$ 810
1992	\$ 850
1993	\$ 880
1994	\$ 930
1995	\$ 940
1996	\$ 960
1997	\$1000
1998	\$1050
1999	\$1110
2000	\$1170
2001	\$1240
2002	\$1300
2003	\$1330
2004	\$1350
2005	\$1380

¹ SGA earnings guidelines apply to blind title II individuals only; blind individuals under title XVI are not subject to any SGA limitations.

² The lower (secondary) apply only to employees, not to self-employed individuals.

C. PROCEDURE - EVALUATION OF EMPLOYEE EARNINGS

1. Earnings Which Ordinarily Demonstrate SGA

“Countable earnings” averaging more than the primary (upper) SGA level or more than the Statutorily blind SGA level, whichever is applicable per [DI 24001.025B.](#), are deemed to demonstrate the ability to engage in SGA, in the absence of evidence to the contrary (such as the inclusion of sufficient subsidy to reduce earnings below the SGA level).

2. Earnings Which Ordinarily Do Not Demonstrate SGA (After 12/00)

Effective 1/01, we will ordinarily consider an employee, whose earnings are equal to or less than the primary SGA amount, not to be engaging in SGA. We will perform additional development beyond looking at earnings only when circumstances indicate that such an employee may be engaging in SGA or might be in a position to defer or suppress earnings, for example, an individual working for a small corporation owned by a relative or by the individual. If evidence shows the individual is in a position to defer or suppress his/her earnings, than the work activity is comparable to an individual who is self-employed. In these situations, use the comparability and worth of work tests in [DI 24001.025D.](#) to evaluate the work activity for SGA purposes. This change does not affect our evaluation guideline for the self-employed.

3. Earnings Which May or May Not Demonstrate SGA (Prior to 1/01)

When average monthly “countable earnings” for work performed prior to 2001 by non-blind employees or by statutorily blind employees are at or above the secondary SGA level but not more than the primary SGA level, a finding of SGA may be made if the work is comparable to that of unimpaired individuals in the community engaged in the same or similar occupations as their means of livelihood, or if the work is clearly worth more than the primary amount shown in [DI 24001.025B.](#)

The purpose of the tests of comparability and worth of work is to provide a nonmonetary standard of evaluation when the substantiality of an employee's activities cannot be determined on the basis of his/her earnings alone. The need for consideration of these nonmonetary standards is particularly apparent in those situations where there is evidence showing that an individual may be engaging in SGA, or appears to be in a position to defer his/her compensation, or by special arrangement is able to suppress his/her earnings. These tests should not be applied simply because the individual worked for insubstantial earnings before the alleged onset of disability.

Under the tests of comparability and worth of work, development may not be required if there is a reasonable explanation as to why an employee's earnings are not substantial, and there are no indications that the comparability or worth of work tests could be met. A reasonable explanation might be the inability to perform the full responsibilities of the job, such as working at a slower rate for fewer hours (part-time) than unimpaired persons.

When an individual does not have substantial earnings because he/she is not performing the full responsibilities of the job, such as working at a slower rate or working fewer hours (part-time) than unimpaired persons, it would be speculative to conclude in a work-issue-only determination that such an individual could increase a limited work effort to a level of SGA. Such a decision, which concerns the capability to engage in SGA, requires consideration of medical and vocational factors. The SGA determination should be based only on consideration of work activity actually performed.

Beginning in 1978, there is no secondary level for evaluating SGA in title II statutory blindness cases. Cases in which “countable earnings” do not exceed the statutorily blind SGA level shown in DI 24001.205B. do not need to be evaluated under the comparability and worth of work tests.

4. Earnings Presumed Not to Demonstrate SGA (Prior to 1/01)

Earnings presumed not to demonstrate SGA are:

- a. “Countable earnings” averaging less than the secondary level indicated in [DI 24001.025B.](#) for work performed at any time by a non-blind individual or for work performed prior to 1978 by a statutorily blind individual will be presumed not to reflect SGA in the absence of evidence to the contrary.
- b. “Countable earnings” averaging at or less than the appropriate year's statutorily blind SGA level shown in [DI 24001.025B.](#) for any year after 1977 by a disability insurance benefit, disabled widower(er)'s benefit, or childhood disability benefit claimant or beneficiary do not represent SGA. When average monthly “countable earnings” of a blind person do not exceed that year's SGA level, a finding that work is not SGA will be made without regard to whether the work is comparable to that of unimpaired claimants doing similar work as a means of livelihood and without regard to whether the work is worth more than the particular year's statutorily blind SGA level.
- c. An employee working in a sheltered work center will ordinarily be considered not engaged in SGA if “countable earnings” do not average more than the primary amount shown for the particular calendar year in [DI 24001.025B.](#)

D. PROCEDURE - EVALUATION OF SELF-EMPLOYMENT INCOME

A self-employed individual will be considered engaged in SGA if any one of three tests in [DI 24001.025D.1.](#) applies. If the individual has not engaged in SGA under test one, then consider tests two and three. Evaluate the individual's work activity based on the value of services to the business regardless of whether the individual receives an immediate income for the services.

1. Self-Employed Individual - Non-blind individual or, prior to 1978, Statutorily Blind Individual

a. Test One--Significant Services and Substantial Income

The services rendered in any year by a non-blind individual or (prior to 1978 by a statutorily blind individual) are significant to the operation of the business under current guides and he/she receives from it a substantial income as determined below:

- For self-employed persons other than farm landlords, the test of whether services are **significant** is dependent upon whether the business involves the services of just one person or more than one person. In one-person businesses in which self-employed persons engage in their trade or profession by themselves without employees, partners, or other assistants (e.g., carpenters, gardeners, handymen, nurses, bookkeepers and people in numerous other business operations), the services are necessarily “significant.” In a business involving the services of more than one person, a sole owner or partner will be found to be rendering **significant services** if the individual either contributes more than half of the total time required for management of the business or renders management services for more than **45** hours a month regardless of the total management time required by the business. (IMPORTANT: The number of hours used in the evaluation of self-employment for SGA differs from the number of hours that indicate a self-employment service month for a Trial Work Period. See [DI 13010.050A](#). and [DI 24010.005A](#).)

For self-employed persons who are farm landlords (i.e., people who rent their farmland to other farmers), if their services meet the test of “material participation” in the activities of the farm, their services are considered **significant**.

- A self-employed person will have substantial income from a business if “countable income” (see [DI 24001.025E](#).) from the business averages more than the primary SGA level shown in [DI 24001.025B](#). or the **livelihood** which the person derives from the business is comparable to either that which he/she had before becoming disabled or that of unimpaired self-employed individuals in the community engaged in the same or similar businesses as their means of livelihood; or

b. Test Two--Comparability of Work Activity

The work activity of a non-blind individual at any time (or of a statutorily blind individual in any year prior to 1978) (in terms of all relevant factors such as hours, skills, energy output, efficiency, duties, and responsibilities) is comparable to that of unimpaired individuals in the same community engaged in the same or similar business as their means of livelihood; or

c. Test Three--Worth of Work Activity

The work activity of a non-blind person at any time (or of a statutorily blind individual prior to 1978) (although not comparable to that of unimpaired individuals as indicated in [DI 24001.025D.1.a.](#)) is nevertheless reasonably worth over the primary amount shown in [DI 24001.025B](#). when considered in terms of its effect on business, or when compared to the salary an owner would pay to an employee for such duties in that business setting.

2. Statutorily Blind Individual - After 1977

The work activity of a statutorily blind individual after 1977 results in “countable income” (see [DI 24001.025E.](#)) that averages in excess of the statutorily blind SGA level shown in [DI 24001.025B.](#) Beginning in 1978, there is no secondary level for evaluating work activity in title II statutory blindness cases. Also, beginning in 1978, the work activity of blind persons should be evaluated only in terms of the dollar amounts shown in [DI 24001.025B.](#) Therefore, when average “countable income” of a blind person in 1978 or later does not exceed the SGA level shown in [DI 24001.025B.](#), a finding that work is not SGA will be made without considering the comparability and worth of work test.

E. POLICY - FACTORS WHICH MAY REDUCE ACTUAL EARNINGS TO A LEVEL LOWER THAN INCOME RECEIVED

1. General

Evaluation of work activity for SGA purposes is concerned only with those earnings that represent a person's own productivity. Therefore, before the earnings guidelines in [DI 24001.025B.](#) are applied, it is necessary to ascertain what portion of the individual's earnings represents the actual value of the work he/she performed. This portion, which is counted for purposes of determining the issue of SGA and is, therefore, compared to the earnings guidelines in [DI 24001.025B.](#), is called “countable earnings” in the case of an employee and “countable income” in the case of a self-employed person.

For example, in the case of employees, earnings may have to be reduced because they include a subsidy from the employer, whether a sheltered work center or other type of employer; earnings may have to be reduced because they include payments that the disabled person makes for certain items and services that he/she needs in order to work (impairment-related work expenses); or work may be in a military service work therapy program with continuation of full salary but the services that are performed are worth much less. (See [DI 24001.025E.2.](#))

In the case of self-employed persons, net income may have to be reduced by deducting such things as the value of any significant amount of unpaid help furnished the individual, impairment-related work expenses (if not already deducted as a business expense), unincurred business expenses paid by someone other than the self-employed individual (as well as the value of things provided), and soil bank payments if they were included as farm income.

These factors ordinarily will be identified and considered by the field office (FO) at the time of its SGA decision, but DDS examiners should be aware of them and refer to the FO any information received during development that raises a question in this area.

2. Work Therapy Programs in Military Service

A person in the military service who is being treated for a severe impairment usually continues to receive full pay. Therefore, for SGA purposes, it is not appropriate to evaluate his/her work activity based on the amount of pay received. Instead, it is necessary to use nonmonetary SGA criteria in assessing the work activity of a service person receiving treatment at a military hospital and working in a designated therapy program or on limited duty. That is, the FO must compare the activity with similar work in the civilian work force and determine its reasonable worth.

Severely impaired service persons may, for example, be placed on limited duty status and put to work in a hospital office, mailroom, laboratory, etc. The controlling factor in these cases is an objective evaluation of the work activity itself, and not the service person's duty status, or whether or not a formal therapy program is involved. The fact that a therapy program or limited duty status is involved necessarily suggests that special conditions may exist. This requires that the FO consider the real value of the work effort within the military setting and then equate its value to similar work in a nonmilitary setting.

3. Subsidies

a. General

An employer may, because of a benevolent attitude toward an individual with a disability, subsidize the employee's earnings by paying more in wages than the reasonable value of the actual services performed. When this occurs, the excess will be regarded as a subsidy rather than earnings.

b. Factors Indicative of Possible Subsidy:

- The employment is “sheltered” (see [DI 24001.025E.4.](#)); or
- Childhood disability is involved; or
- Mental impairment is involved; or
- There appears to be a marked discrepancy between the amount of pay and the value of the services; or
- The employer, employee, or other interested party alleges that the employee does not fully earn his/her pay (e.g., the employee receives unusual help from others in doing the work); or
- The nature and severity of the impairment indicate that the employee receives unusual help from others in doing the work; or
- The employee is involved in a government-sponsored job training and employment program.

c. Employer - Calculated Subsidy

An employer wanting to subsidize the earnings of an individual with a disability may designate a specific amount as such, after figuring the reasonable value of their services. Such a calculation is more

likely to be made by an institutional employer, such as a sheltered work center, than by a private employer. However, regardless of the type of employer, an adequate explanation as to how a specific subsidy was calculated will normally suffice without the additional development indicated in [DI 24001.025E.3.d.](#)

d. Nonspecific Subsidy

If the employer cannot furnish a satisfactory explanation identifying a specific amount as a subsidy, the FO must undertake further development.

In most instances, the amount of a subsidy can be ascertained by:

Comparing the time, energy, skills, and responsibility involved in the individual's services with the same elements involved in the performance of the same or similar work by unimpaired individuals in the community; and

Estimating the proportionate value of the individual's services according to the prevailing pay scale for such work.

To determine the time, energy, skills and responsibility involved, the FO may ask the following questions:

- Why was the individual hired?
- What are the individual's job duties?
- How much time does the individual spend on those duties?
- Who did the job before the individual was hired; and how much time did that person spend on the duties of the job?
- If the individual were to be separated from the job, would he/she be replaced; if so, how much time would the replacement spend on the individual's duties?
- How often is the individual absent from work?
- Does someone else do the individual's work when he/she is absent?
- How much time does the temporary replacement take to do the individual's job?
- How are the individual's total earnings computed?
- Is the individual's pay reduced proportionately when he/she is absent from work?
- Does the individual receive any unusual assistance or supervision?
- If the individual's pay is not set according to normal business practices, what consideration is given to the size of the individual's family, number of years of past service with the employer, previous earnings, friendship or relationship to the employer, or other factors unrelated to the performance of the work?
- Does the employer consider the individual's work to be worth substantially less than the amount paid and, if so, what are the employer's reasons for this view?

- If the individual is still on the payroll, despite unsatisfactory work, what is the employer's reason for retaining him/her?
- If the individual is no longer employed, what led to the termination of employment?

When precise monetary evaluation is not feasible, it may be possible for the FO to determine the approximate extent of a subsidy on the basis of gross indications of lack of productivity; for example, when unusual supervision or assistance is required in the performance of simple tasks, or the employee is extremely slow and inefficient or otherwise unproductive.

A finding in a disability determination on the actual monetary worth of services will not ordinarily be considered a reflection on the validity of amounts reported as wages. Other legal and administrative considerations will generally protect the full crediting of such remuneration as long as the employment relationship is bona fide. Therefore, the FO will not initiate the revision of an earnings record solely on the basis of disability development indicating that a subsidy was included in the amounts reported as earnings.

e. Special Conditions Provided by Employers and/or Organizations Other than the Individual's Employer

Although special conditions on the job, for example, job coaching and like services, are not technically “subsidies,” we must consider how they affect the value of the work and the SGA determination. For example, special conditions and certain on-the-job assistance provided by an employer and/or an organization(s) other than an individual's employer must be considered whether or not the individual's employer pays for the assistance directly. In determining SGA, we must count only those earnings that are based on an individual's own productivity and exclude any income that is not directly related to his/her own productivity.

If the individual is not fully earning his/her wages because the work is performed under special conditions (e.g., close and continuous supervision, on-the-job-coaching and substitution during which the job coach performs part or all of the individual's job duties), then we must deduct that part of his/her wages that are not “earned” by the individual from his/her average gross wages. This is true whether or not the employer or someone else provides the special (on-the-job) conditions.

In order to determine the amount an individual actually earns, follow the same procedures found in [DI 10505.010A.](#), [DI 11010.210](#) and [DI 24001.025E.3.](#) Determine the value of the individual's services (i.e., work) by contacting the individual, his/her employer, supervisor(s), work peers, and the job coach and any one else who would have this knowledge. The value of the individual's actual services may require contact with other employers or the Department of Labor to determine the wages usually paid for such services. Stop development when there is sufficient information to make a determination.

NOTE: Follow [DI 13010.075](#) to compute average monthly wages when you know the hourly wage and the individual's employer is unable to provide a monthly breakdown of earnings. In the examples below, we know the exact hours worked and the hourly wage. Do not consider the salary paid to the job coach in calculating the individual's countable earnings in determining SGA.

EXAMPLE 1: Joe starts employment in 6/98 at a department store. He works 32 hours per week, and he is paid \$6.00 an hour. He has a job coach who works with him 15 hours per week. The job coach

performs all of Joe's duties during the 15 hours, while Joe observes and practices. Joe's gross pay for 6/98 is \$768 (\$6.00 per hour X 32 hours per week X 4 weeks). Although Joe receives wages for 128 hours of work a month, he performs the work for 68 of those hours. The job coach performs the other 60 hours of work for the month. The portion of Joe's monthly pay attributable to the job coach's assistance is \$360 (\$6.00 per hour, for 15 hours per week, 4 weeks per month). This portion of Joe's monthly pay attributable to his own productivity is \$408.

EXAMPLE 2: Jane earned less than the SGA level for the prior months because her job coach was performing most of her job duties throughout the workday while Jane observed and practiced. Jane is now trained. The job coach is with Jane 40 hours a month. For 10 of these hours, the job coach performs the more technical work and during the remaining 30 hours, she just observes Jane working and verifies the quality of Jane's work. Jane is fully earning her wages during these 30 hours. Jane works 120 hours a month and she is paid gross wages of \$720 per month on average (120 hours a month at \$6.00 an hour). The amount of Jane's income not directly attributable to her own productivity is \$60 per month (10 hours at \$6.00 an hour, when the job coach does Jane's work). The amount of Jane's earnings attributable to her own productivity is \$660 (\$720 gross wage minus \$60).

4. Sheltered Employment

Sheltered employment is employment provided for individuals with disabilities in a protected environment under an institutional program. The most common types of sheltered employment are the following:

a. Sheltered Work Center

Sheltered work centers engage in manufacturing, assembly, reconditioning, repair, and other operations. These may involve direct sales to consumers and retailers, or the fulfillment of industrial contracts. Some work centers also furnish services or facilities for medical care, physical restoration, psychiatric therapy, recreation, vocational evaluation and training, job placement, etc.

b. Hospitals, Department of Veterans Affairs (VA) Domiciliaries, and Long-Term Care Institutions

Hospitals, VA domiciliaries, and similar institutions for the care of individuals with long-term impairments, usually have occupational therapy programs designed to encourage the use of patients' residual physical and mental capacities. If the institution furnishes free room and board to nonworking patients (as, for example, VA domiciliaries do), then the value of room and board is not considered pay to patients who work. However, an individual who works for an institution after he/she has been discharged from patient status may receive room and board as part of regular pay. When this occurs, the value of room and board is considered payment in-kind and is included in gross earnings.

c. Homebound Employment

“Homebound employment” refers to work done at home by individuals under public or institutional programs designed to provide them with paid employment. Pay for the work is usually on a piece-rate basis. The employer delivers raw materials to the individual's home and picks up finished merchandise. Sometimes family members may assist the impaired individual in performing the work. The value of such assistance should be deducted from wages before the SGA dollar guidelines are applied.

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