1125.5 Effect Of Earnings

1125.5.1 General

A disability annuity (D/A) is not payable for any month in which an annuitant:

A. Works in railroad service; or

B. Is under full retirement age and earns more than the monthly disability earnings limit after deduction of disability related work expenses in employment or self-employment of any kind.

EXCEPTION: Payments to volunteers under the Domestic and Volunteer Service Act of 1973 do not eliminate eligibility for any government program. That act consolidated the domestic volunteer programs throughout the Federal government under the ACTION agency. The services are meant to be provided by volunteers, and stipends or allowances are paid to enable volunteers to effectively carry out their assignments. Earnings under the following programs do not affect payment of a disability annuity:

1. Title 1 - National Volunteer Antipoverty Programs:
    a. Part A - Volunteers in Service to America (VISTA);
    b. Part B - Service-Learning Programs;
    c. Part C - Special Volunteer Programs.
2. Title II - National Older American Volunteer Programs:
    a. Part A - Retired Senior Volunteer Program;
    b. Part B - Foster Grandparent Program and Older American Community Service Programs.
3. Title III - National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Persons with Business Experience.

1125.5.2 RR Act Disability Work Deductions

A disability annuitant who is under full retirement age is restricted by the Railroad Retirement (RR) Act disability annuity work limitations. The work restrictions apply to both an occupational and a total and permanent disability annuity. In addition to causing work deductions, the earnings of a disability annuitant may indicate that disability has ceased. A continuance of disability determination is made according to FOM-I-310.60 and 310.65 whenever earnings are reported. An application of a 9-month trial work period is made according to FOM-I-310.65.2 when DBD is testing an individual's ability to do work without losing benefits. A trial work period extension (TWP EXT) is determined according to FOM-I-325.95.

Disability work deductions apply to the full annuity rate, rather than to certain work deduction components as in retirement cases.

Under the RR Act, effective January 1st, a disability annuitant may earn up to the yearly disability earnings limit without losing any annuities for the year (**click here for: Disability Monthly and Yearly Earnings Amounts**). However, annuities are withheld for any month throughout the year in which the annuitant earns over the monthly disability earnings limit after deduction of disability related work expenses a month. A disability annuitant must report all work activity when it begins, regardless of the amount of earnings. The disability annuity will be suspended if the annuitant earns over the monthly disability earnings limit after deduction of disability related work expenses a month).

Penalties may be applied if the earnings are not reported timely.

Disability related work expenses are described in FOM-I-310.55.3.

If the annuitant's earnings at the end of the year are not more than the yearly disability earnings limit, any annuities and penalties withheld during the year (because of monthly earnings over the monthly disability earnings limit) will be payable after the year's end.

If the annuitant's earnings at the end of the year are more than the yearly disability earnings limit, final work deductions are determined. One month's annuity is withheld for each month of disability earnings over the limit. A fraction of earnings of half (50%) the monthly disability earnings or more is counted as the monthly disability earnings limit (examples: for 2020, the fraction is $495 which is half (50%) of the $990 monthly limit; for 2019, the fraction is $475 which is half of the $950 monthly limit). One month's annuity is also withheld for each penalty.

Regardless of the annual earnings, no annuity will be withheld in any month in which the employee’s earnings were under the monthly disability earnings limit.

EXAMPLE: For 2015, a D/A was suspended for 2 months in which the annuitant reported earnings over $850 after deduction of disability related work expenses. His earnings at the end of the year were $7000. The 2 months' annuities were refunded; no penalties were withheld because the earnings were reported timely.

If the annuitant's earnings at the end of the year (2015) were $12775.00, and the employee had performed service and earned over $850 in three or more months in that year, 3 deduction months would apply. The earnings in excess of $10625.00 are $2075.00. A total of 2 work deduction months apply for the first $1700.00 of excess earnings. Since the remaining amount of $450 ($2075.00 - $1700.00) is greater than $425.00, an additional deduction month would apply.

Prior to the year 2000, when a disability annuitant attained full retirement age, regular retirement work deductions would then apply.

Beginning in the year 2000, no work deductions apply beginning with the month in which the disability annuitant attains full retirement age.

For maximum monthly and yearly disability earnings click here: Monthly and Yearly Disability Earnings Chart.

1125.10 Deductions When Disability Annuitant Attains Full Retirement Age Prior To the Year 2000

A disability annuitant, full retirement age or older is not limited to the yearly earnings amount (see FOM 1 1125.5.2). The annual earnings limitation applies beginning the month the disability annuitant attains full retirement age because the disability annuity technically becomes an age annuity at full retirement age. Work deductions apply at full retirement age only if the annuitant has a work deduction insured status (see FOM 1 1120.20).

The earnings from the beginning of the year through the month before the month the annuitant attains full retirement age are used to determine RR Act disability work deductions. Work deductions under the annual earnings test are based on earnings for the entire year. Deductions may be applied beginning the month the annuitant attains full retirement age. The annual limit for full retirement age or over is used.

EXAMPLE: Grace Jones was receiving a D/A and earned $7300.00 in 1989. She attained full retirement age in June. Her earnings through May, the month before the month she attained full retirement age, were $5,200.00. These earnings caused one disability work deduction month. Her total yearly earnings, $7,300.00, exceeded the annual exempt amount of $6,480.00. Consequently, her annuity was not payable for part of June to withhold $410.00 for excess earnings.

BEGINNING IN THE YEAR 2000

Effective with the month a disability attains full retirement age, work deductions will cease to apply. The disability work deduction rules apply in the year through the month before the month the annuitant attains full retirement age.

1125.15 Earnings to Be Counted In Year

For deduction purposes, a person's earnings for a calendar year consist of the sum of his remuneration for services rendered as an employee during the year, and his net self-employment (SE) earnings for the year.

If a disability annuity begins after the first of the year, only the annuitant's earnings after the annuity beginning date are counted for application of the RR Act disability earnings provision. If the annuitant attains full retirement age or dies before the end of the calendar year, only his earnings through the month before the month in which the event occurs are counted. If the annuitant recovers from his disability, his earnings through the month in which his annuity is last payable are counted, not the month in which he recovers from disability.

1125.15.1 Deduction for Disability Related Expenses from Earnings Amount

Disability related work expenses (DRWE) are special expenses that the annuitant paid which are necessary for him to work (for example, attendant care, medical devices, equipment, prostheses, or similar items or services). If these expenses are claimed, refer the case to the DBD to determine if they are allowable per instructions in their disability manual. If annuitant claims such expenses, ask the field office to develop per instructions in the FOM.

1125.20 Allocating Earnings

Because a disability annuitant's work must be reconciled with the disability rating, special consideration must be given when a disability annuitant has earnings but alleges that he was not working. The disability programs section (DPS) determines if the disability annuitant has demonstrated the ability to perform substantial gainful activity that indicates the cessation of disability. When a disability annuitant is self-employed, OPR (the overpayment recovery unit) reviews the case to determine if the annuitant is performing substantial services in SE, and for which months.

1125.20.1 SE Earnings from Family Enterprise

When an annuitant's SE is part of a family enterprise in which other family members actively participate in earning the money, the annuitant is not considered to have earned that portion of the income due others for their services to him. This applies even though the income goes to the annuitant himself as head of the family or as title owner of the land producing the income. The amount chargeable to the labor of others includes the reasonable value of the services performed even when these services are not actually paid for.

1125.20.2 Allocating Earnings to Prior Months

Earnings of a disability annuitant are not averaged over any period. When a disability annuitant is working, his earnings are usually credited to the month(s) in which he was paid. However, when it is definitely indicated that part of his earnings represent accruals for earlier month(s), these specific earnings are charged to the month(s) in which they were earned.

In determining net earnings from SE, expenses or losses should be deducted from the same month(s) to which the gross SE earnings are charged. When payment is received in a particular month for an operation carried on over a number of months (e.g., farming), and payment cannot be allocated to other months, the expenses incurred are deducted from the amount of the payment considered to be for "earnings." The fact that the expenses were incurred in months other than the month in which payment was made is immaterial.

In the following examples the amounts reported represent NET income.

EXAMPLE 1: A disability annuitant is self-employed as a real estate agent. He reports that he was paid $1,000.00 in August as commissions for three sales, as follows: $150.00 for a sale completed in April, $300.00 for a sale completed in July, and $550.00 for an August transaction. In this case, definite and ascertainable parts of the $1,000.00 paid in August represent earnings for earlier months. Deductions must be made for July and August.

EXAMPLE 2: A disability annuitant owns a liquor store. He reports earnings of $50.00 in January, $70.00 in February, a loss of $80.00 in March, and earnings of $4,000.00 in April. Since the earnings for April are obviously out of line, the annuitant will be requested to name the months in which the $4,000.00 was earned.

1125.20.3 Allocating Renewal Commissions for Insurance Salesman

The term "renewal commission" as used here refers only to the commissions paid on the basis of the sale of life insurance for the second or later years of the policy.

When a disability annuitant reports that he received renewal commissions based on the previous sale of a life insurance policy, those amounts are considered to have been earned when the insurance policy was sold, if the annuitant was considered an employee of the company when the sale was made. If the annuitant was self-employed, the renewal commissions are not counted as earnings for work deduction purposes if the annuitant did not perform any services in the year the renewal commissions are paid.

1125.20.4 Allocating Bonuses

When a disability annuitant reports that (s)he received a bonus and does not indicate that the bonus was based on earnings, the amount of the bonus is divided by the number of months in which he worked; each month is credited with equal amounts of earnings.

If the annuitant reports that (s)he received a bonus based on his/her earnings (for example, 10 percent of his/her earnings), the earnings for each month are increased by the ratio which the bonus bears to the total earnings.

When a person's earnings are increased to more than the monthly disability earnings limit in any month as a result of the allocation of a bonus payment, the allocation cannot, by itself, cause an additional deduction to be imposed because of failure to report.

1125.25 When Work Must Be Reported

A disability annuitant must report any current, future or past work activity. Penalties may be applied if a report is not made within 2 months of the first month the annuitant earns over the monthly disability earnings limit (see FOM1 1125.5.2). All work activity must be reported, regardless of the amount of earnings, because the work may affect the continuance of disability.

Work must be reported when the annuitant begins or expects to begin work for someone else, or self-employment. The report must include the following information:

A. The kind of work;

B. The name and address of the employer;

C. The date employment began;

D. The number of hours to be worked each week;

E. The expected monthly earnings; and

F. The expected length of employment;

G. Any expenses (DRWE and IRWE) to be deducted from monthly amount earned (see FOM 1 310.55).

A report must also be made whenever the annuitant earns more than the monthly disability earnings limit in a month and previously informed us it would be less, or when the annuitant changes jobs. Remember that it is very important to establish the date of an earnings report because penalty deductions may result from a late report.

In signing the application certification, each applicant agrees to notify the Railroad Retirement Board of events that affect his annuity, including work. The applicant receives booklets (Forms RB-l and RB-ld) that explain when an annuitant must report work, and include instructions for making a report. The applicant also receives the application receipt that contains the same instructions.

When a disability annuitant has reported earnings of over the monthly disability earnings limit in a month after deduction of disability related work expenses, an earnings questionnaire (Form G-19) will be released after the end of the year. An annuitant must file a report on his own if earnings were more than the monthly disability earnings limit in a month after deduction of disability related work expenses or over the yearly disability earnings limit, and it was not previously reported. The reported earnings must be imaged as file only "Earnings Report" AND a report of work email should be sent to DPS mailbox. To ensure all statements are handled accordingly, it is important to send the report of work email to the DPS mailbox as soon as the report of work statement is imaged on Workdesk.

1125.30 Penalties for Late Reporting

A penalty deduction may be applied if a disability annuitant under age full retirement age does not report earnings of more than the monthly disability earnings limit in a month within 2 months of the month he was paid for his employment. The report must be made before the annuitant receives and accepts his annuity payment for the second month following the month he was paid over the monthly disability earnings limit after deduction of disability related work expenses.

EXAMPLE: A disability annuitant was paid over the monthly disability earnings limit in May. The work must be reported before he receives and accepts the annuity payment for the second month following May. He must report the work before he accepts the payment dated August 1, payment for July, or a penalty will apply.

A penalty deduction is equal to the amount of the employee's annuity for the month of excess earnings for which the report was late. In the preceding example, the penalty will equal the annuity rate for May if a report is not made timely.

1125.30.1 Receipt and Acceptance of Payment

It is assumed that a payee received and accepted an annuity payment if it was mailed or deposited by electronic funds transfer and was not returned. If a payee returns a payment, whether it is endorsed or not, that is evidence that he did not accept it. Unless a payment is returned, we may impose additional deductions in the belief that the payment was accepted.

Penalty deductions are to be applied at the same time the overpayment is being worked up and are included as part of the total overpayment. The explanation regarding the penalty is included in the overpayment letter. If penalty deductions should have been assessed but were overlooked when the overpayment was being worked up, they can be assessed during the reconsideration process. The overpayment amount in the Program Accounts Receivable (PAR) System includes the penalty amount. The penalty amount is recovered by the same method of recovery selected by the overpaid person to repay the regular overpayment amount. Penalty deduction amounts cannot be waived.

1125.30.2 First Failure to Report

When a disability annuitant fails to report earnings over the monthly disability earnings limit in a month after deduction of disability related work expenses before receiving and accepting an annuity for the second month following the month in which he was paid for his employment, a penalty deduction equal to 1 month's annuity is imposed. For the first failure to report, the deduction equals only 1 month's annuity, even if the annuitant worked in more than 1 month and did not report until much later.

EXAMPLE: In 2018, Mr. Boyd was paid $920.00 in September and each month after that. He did not report his employment before receiving and accepting his annuity payment for the month of November (dated December 1). One penalty deduction applies, equal to the annuity for September. Only one penalty applies, even if he did not report his work until the next year and worked each month, because this is his first failure to report.

1125.30.3 Subsequent Failures to Report

The second time that a disability annuitant fails to report receipt of earnings over the monthly disability earnings limit in a month after deduction of disability related work expenses before receiving and accepting an annuity for the second month following the month in which he was paid for his employment, penalties equal his annuities for the month(s) in which he was paid for his employment and for which his report was not timely.

EXAMPLE: In 2017, Mr. Lee was paid over $910.00 each month from September through December and over $920 each month in January and February 2018. He reported his employment on March 15 and did not return his check for the month of February. This was Mr. Lee's second failure to submit a timely report; a penalty applied 2 years before for failure to report. Because it was the second time he failed to report, the penalty deductions equal his annuities for the months of September, October, November and December. His report was timely for the months of January and February.

1125.30.4 Recovering Penalty Deductions

Annuity deductions because of penalties are generally recovered by full withholding of the annuity. The annuity is withheld in the year the annuitant failed to report, or in a later year when it is determined that a penalty should have been imposed in a previous year. The penalty month is always in addition to months withheld for earnings over the monthly disability earnings limit after deduction of disability related work expenses.

Because a penalty deduction <u>must</u> be withheld from the annuity, the annuitant is not asked to refund the additional deduction. However, if the annuitant volunteers to pay for a penalty deduction, the payment for the penalty deduction will be accepted. Otherwise, a penalty deduction amount will be recovered before the annuity is reinstated.

When a disability annuitant dies and there is an outstanding penalty deduction against his annuity, the outstanding amount may not be deducted from any benefits due his survivors or estate, <u>except employee annuities that were accrued but unpaid at death</u>. The penalty amount will not be recovered unless there are employee annuities payable. This rule applies whether the deduction event was discovered before or after the annuitant's death. A penalty deduction may be recovered only by full withholding from the disability annuity. If a disability annuity is terminated because the annuitant recovers from disability or is suspended because the annuitant is working and not currently entitled to benefits, and there is an outstanding additional deduction, the deduction will be withheld at a later date when the annuity is reinstated.

When a penalty deduction is to be imposed in the case of an annuitant not currently entitled to benefits, notify the annuitant that when he is again entitled to an annuity (e.g. when he stops working), a penalty deduction will be imposed for failure to report his employment within the time prescribed by law. Tell him the amount that will be withheld from his annuity when his payments are reinstated.

1125.30.6 Action When Annuitant Pays or Offers to Pay Penalty Deduction

Because a penalty deduction is not due until the annuitant is reinstated on the rolls, and is not due at all if he dies before reinstatement, refuse any offer of payment of the penalty deduction. Inform the annuitant that the amount will be withheld from his annuity when payments are reinstated.

If the annuitant submits a check or money order for an overpayment and the penalty deduction, return the amount of the penalty deduction to him as a "One Payment Only" award (see Form G-357 Instructions). Show in the "Remarks" space of the award form, "penalty deduction sent by annuitant returned." Inform him that the payment is being returned because it is not due until his annuity is reinstated and that, according to law, a penalty deduction can be recovered only by withholding from his annuity.

NOTE: The procedure for a cash refund of a penalty in disability cases differs from the procedure for cash refund of a penalty in age and service cases.

If the annuitant later complains or inquires about the possibility of having penalty deductions recovered by a method other than full withholding, refer the case to RAC.

1125.30.7 Responsibility for Applying Penalty Deductions

The organizational unit having jurisdiction over the erroneous payment will determine when penalty deductions are to be imposed.

1125.30.8 Actuarial Adjustment

It will not generally be known whether disability work deductions assessed during the current year will be payable later. Consequently, if an overpayment, part of which is applicable to the current year, is recovered by actuarial adjustment, it may be necessary to redetermine the actuarial rate after the first of the next year. To avoid this situation to the greatest extent possible, recover any overpayment for the current year by set off.

1125.30.9 Penalty Deductions Extend Past the Month Annuity Terminates

A. Reason For Termination Is Death - When a disability annuitant dies and there is an outstanding penalty deduction against his annuity do not deduct the outstanding amount from any annuities due his survivors or estate, except employee annuities that were accrued but unpaid at death.

B. Reason for Termination Other Than Death - When a disability annuity is terminated because the annuitant recovers and there is an outstanding penalty deduction, do not request refund of the penalty deduction.

Insert a sheet of 5 x 8 paper in the folder (immediately above the latest award form) with the notation, in red, "PENALTY DEDUCTIONS APPLY".

If, at a later date, the annuitant becomes entitled to an age and service annuity or another disability annuity, check the claim file carefully to determine if such a notation has been made. If so, withhold the amount of the penalty deductions from the current annuity. When this action is taken, remove the notation from the folder.

1125.35 Temporary Disability Work Deductions

When a disability annuitant reports that he will earn over the monthly disability earnings limit in a month after deduction of disability related work expenses, the disability annuity will be suspended the later of the current month or the first month the earnings will exceed the monthly disability earnings limit after deduction of disability related work expenses. The annuity will remain in suspense unless the annuitant informs us he no longer expects to earn over the monthly disability earnings limit in a month. In that case, it must first be determined if the annuity should be withheld an additional month because a penalty for failure to report has been imposed. An annuity will not be reinstated until the annuity has been withheld to recover any penalty deduction(s).

A suspension notice on Form AB-31-back is used to notify the employee when his disability annuity is suspended because earnings exceed the monthly disability earnings limit in a month after deduction of disability related work expenses. The letter requests refund of the overpayment of annuities for months the annuitant earned over the monthly disability earnings limit and the annuity was not suspended. It also informs the annuitant if a penalty deduction applies because earnings were not reported timely. If the overpayment is not refunded, it will be handled when permanent work deductions are determined after the end of the year. It is possible that no overpayment will exist if the employee's final earnings for the year do not exceed the current yearly disability earnings limit.

The disability annuity is reviewed for continuance of disability as described in FOM-I-310.60 and 310.65.

EXAMPLE 1: Mrs. Green returned her May 1, 2018 payment with a note that she began work in March and was earning $930.00 a month after deduction of disability related work expenses. Her annuity was suspended effective April 1, since the return of her May 1 payment suspended the June 1 payment. No penalty applies because the work was reported before she received and accepted the June 1 check (payment for May). Her annuity remained in suspense until she informed us that her earnings were less than the monthly disability earnings limit beginning in September after deduction of disability related work expenses. The annuity was reinstated effective September 1, because her monthly earnings were not more than the monthly disability earnings limit after deduction of disability related work expenses and no penalty deduction applied.

EXAMPLE 2: Mr. Smith informed us in June 2018 that he began work in January but would earn only $915.00 a month after deduction of disability related work expenses. No suspension action was taken because he would not earn more than the monthly disability earnings limit in a month, and no penalties apply because earnings were not over the monthly disability earnings limit in a month.

EXAMPLE 3: Mr. Brown informed us in September 2018 that he began earning $930.00 a month in June. His annuity was suspended with the payment dated October 1. Based on his estimate, he would earn only $6,440.00. However, his annuity must be suspended for any month he earns over $920.00 after deduction of disability related work expenses. Also, a penalty deduction would be applied in the current year. Our letter asked Mr. Brown to refund the overpayment for the 3 months of payments he received, and advised him his annuity would remain in suspense. Recovery of the penalty amount would be included when the final overpayment is determined. In this case, when permanent work deductions were determined, there actually was no overpayment because final earnings did not exceed $11,499.99.

1125.40 Permanent Disability Work Deductions

A final report of earnings is required after the end of the year, when a disability annuitant has reported earnings of more than the monthly disability earnings limit in a month after deduction of disability related work expenses. An annual monitoring report (Form G-254 to the annuitant and Form RL-231f to the employer) will be mailed in those cases.

If an annuitant earns less than the yearly disability earnings amount for the year, annuities are payable for every month. This is true even if annuities were withheld for earnings over the monthly disability earnings limit in a month after deduction of disability related work expenses or for penalty deductions. A penalty deduction may not apply for the year if the final earnings were less than the yearly disability earnings amount. (Refer to the chart in FOM 1125.5.2 for the monthly and annual earnings limits).

If an annuitant's earnings are over the yearly disability earnings limit, one month's annuity must be withheld for every fraction of 50% of the monthly earnings limit (half of the monthly earnings amount) that is over the yearly disability earnings amount ($). Fractions of 50% of the monthly earnings limit (half of monthly earnings amount) or more are counted the same as the monthly disability earnings limit. Penalty deduction months must also be withheld.

If the annuity rate changes during the year, the annuity is withheld for months in which the lower rate is payable. However, the penalty amount equals the annuity rate for the month(s) the employee had excess earnings and the report was not timely.

EXAMPLE 1: Mr. Best started working on January 1, 2018. He earned $1,350.00 per month in January, February and March, and $900.00 each month from April through December. He did not report his earnings over the monthly disability earnings limit until June. The annuity was suspended July 1 to withhold the annuity for 1 penalty month. Because his earnings were less than the monthly disability earnings limit after March, the annuity was suspended only to withhold the penalty deduction. Since his final earnings totaled $12,150, only 1 month's annuity had to be withheld for permanent work deductions ($650.00 over $11,500.00). One month's annuity also had to be withheld because he failed to make a timely report. The two deductions would be applied at the rate payable for January; the difference between twice the January rate and the total annuities withheld would be refunded.

EXAMPLE 2: In September 2016, Mr. Brown reported earnings of $881.00 a month beginning June 1, 2016. His annuity was suspended October 1 to withhold 7 months' annuities and one penalty deduction for late reporting. Since his earnings totaled only $6,167.00, all annuities, including the penalty deduction, were refunded after the end of the year when permanent work deductions were assessed.

EXAMPLE 3: Mrs. Adams earned $1100.00 a month after deduction of disability related work expenses beginning March 1, 2017. She informed us in April, so no penalty deduction applies. She returned the April 1 payment, and the May 1 payment was suspended. Her annual earnings report showed a total of $12,500.00, which required 2 months' deductions ($1580.00 over $10920.00). The withholding for permanent work deductions was applied to the months January through June; the balance was refunded to her.

Example 4: The 2021 annual earnings limit is $12,750.00 and monthly earnings limit is $1,020. If an annuitant earned $12,749.99 in 2021, earned $509.99 over the $12,240.00 limit ($1,020 x 12 months), no work deduction would be imposed since this excess is less than $510.00 (half of $1,020). FOM 1 Article 11 has more information on work deductions. (NOTE: This example can be applied to any year past or future since it follows a basic formula. You can replace the amounts shown with earnings limit for the year in question).