10.1 Introduction

10.1.1 Scope of Chapter

This chapter discusses an annuitant's continued entitlement to a disability annuity. Statutory requirements necessitate that continued entitlement to an annuity must be reviewed periodically until the employee or child reaches full retirement age (FRA) and the widow(er) reaches age 60, unless the impairment has been classified as so severe that medical improvement is not expected (MINE). (See DCM 8.5.2 for additional information on medical improvement classifications.)

The two major factors that are considered in deciding whether a disability continues are work and medical improvement. These factors are defined in the disability regulations. These regulations have been included with existing procedure and form the basis for this chapter.

10.1.2 Regulations Governing Continuance Or Termination Of Disability

The Disability Benefits Division (DBD) makes disability decisions for all claims of disability under the Railroad Retirement Act. These decisions are based either on the rules contained in the Board's regulations or the rules contained in the regulations of the Social Security Administration, whichever is controlling.

In addition to making initial disability decisions, DBD is required to periodically review those claimants that have been granted benefits to determine whether they continue to be disabled, unless the impairment upon which the disability is based is classified as so severe that medical improvement is not expected (MINE). (See DCM 8.5.2 for additional information on medical improvement classifications.) Subpart O, Sections 220.175 through 20.187 of the Board's revised regulations describes the process under which the Board makes these determinations. These regulations parallel the regulations of the Social Security Administration found in Subpart P, Part 404, of Title 20 (Determining Disability and Blindness).

10.1.3 Responsibility To Notify The Board Of Events Which Affect Disability

If the annuitant is entitled to a disability annuity, the annuitant should promptly tell the Board if -

(a) their impairment(s) improves;

(b) they return to any type of work;

(c) they increase the amount of work; or

(d) their earnings increase.

10.1.4 Circumstances Which Raise A Question Of Continuing Disability

Various situations occur which may indicate a need for a continuing disability investigation to determine whether an issue of continuing eligibility exists. Any one of the following situations warrants a continuing disability investigation.

A. Disability Monitoring System - DBD is required to conduct periodic reviews of an annuitant's continued entitlement to a disability until an employee or child reaches FRA and until a widow(er) reaches age 60, unless the impairment upon which the disability is based is classified as so severe that medical improvement is not expected (MINE). (See DCM 8.5.2 for additional information on medical improvement classifications.) This requirement has led to the development of the disability monitoring system which includes the following four categories. (See DCM 8.5 Detailed Benefit Monitoring.)

- Medical Improvement Expected (MIE) - These are medical examination diary cases in which the individual's impairment(s) is expected to improve.
- Medical Improvement Possible (MIP) - Refers to a medical examination diary case in which medical improvement is possible.
- Medical Improvement Not Expected (MINE) - These are cases in which the individual's impairment is so severe that medical improvement is not likely.
- Administrative Appeal - These are any disability cases that were awarded on the basis of a decision by a hearings officer, the Board members or a Federal court.

B. Third Party Reports - A notice is received from someone, in a position to know, indicating one of the following:

- The annuitant's physical or mental condition has improved, or;
- The annuitant returned to work, or;
- The annuitant is not following prescribed treatment, or;
- The annuitant is failing to follow the provisions of the Social Security Act, the Railroad Retirement Act or Regulations.

C. Earnings Involved - Substantial earnings are reported to the annuitant’s wage record.

D. Return to Work - The annuitant returns to work and successfully completes a trial work period.

E. Annuitant Report - The annuitant tells DBD that they have recovered from their disability or that they have returned to work.

F. Current Medical Evidence - Advances in medical technology or a change in vocational therapy requires current medical evidence to see if the annuitant's disability continues.

G. State Vocational Rehabilitation Notice - A State Vocational Rehabilitation Agency tells DBD that:

- The services have been completed; or
- The annuitant is now working; or
- The annuitant is able to work.

H. Questions Regarding Continuance - Evidence DBD receives raises a question as to whether the annuitant's disability continues.

10.1.5 Suspension Of Disability Annuity (DA)

A. Non-Payment Months - A D/A is not payable for any month in which an annuitant:

- Works for a railroad or other employer in the RR industry; or,
- Earns more than the current monthly disability earnings limit after deduction of disability related work expenses in employment or self-employment of any type. See DCM 10.8 for an explanation of disability related work expenses. Refer to the chart in FOM 1125.5.2 for the monthly and annual earnings limits.

Examiners should immediately suspend payments upon receiving notice from the EE that they are currently doing any of the above events. If the report is from a third party, due process notification is required prior to suspension. However, no appeal rights should be given on the suspension notice.

NOTE: Payments should not be suspended when the annuitant is engaged in VISTA sponsored activity. Refer these cases to P&S.

B. Administrative Suspensions - D/A payments are to be suspended by DBD if the annuitant fails to report for a medical examination scheduled by DBD for policing purposes.

10.1.6 Diaries For Suspended Disability Employee Annuitants Due To Earnings

A disability annuity is not payable for any month in which an annuitant works for an employer covered under the Railroad Retirement Act. In addition, an employee's disability annuity is not payable for any month in which the employee earns over the current monthly disability earnings limit (after deduction of impairment-related work expenses) in employment or self-employment of any kind. Refer to the chart in FOM 1125.5.2 for the monthly and annual earnings limits.

When a disabled employee's annuity is suspended due to work, two diaries will need to be established.

A. Employee end-of-year adjustment diary:

If an employee's earnings are less than yearly disability earnings limit (computed as monthly disability earnings amount x 12 months + 50% of monthly disability earnings amount), all annuity payments and penalties withheld during the year because of earnings are payable. Therefore, when an employee's disability annuity is suspended due to reported earnings over the current monthly disability earnings limit per month, set a call-up for a possible end-of-year adjustment using Form G-65b (Reason Code 50 - Section 2(e) 4 Refund and Section Code 06 - Retirement Post Section). In the remarks section of Form G-65b enter, "possible end-of-year adjustment."

B. Trial Work Period Diary (See DCM 10.5.4 and 10.5.5):

Using CDR PC call-up program, establish a call-up for the trial work period using earnings or return to RR service as the call-up reason.

10.1.7 Termination Causes

Entitlement to railroad retirement disability benefits may be terminated by the following causes:

- Death of the beneficiary;
- Medical recovery;
- Demonstration of ability to work.

Before a disability annuity is stopped for reasons other than death, the annuitant must be given a chance to explain why it should not be terminated. DCM 10.6.1 explains the requirements of the termination notice.

10.1.8 Termination Of Disability And Termination Of Entitlement To A Disability Annuity

A. Determining the Month Disability Ends

1. In Medical Improvement Cases

The month disability ends in medical improvement cases is as follows:

The month DBD mails the annuitant a notice saying that DBD finds that they are no longer disabled based on evidence showing there has been medical improvement in the annuitant's impairments related to the ability to work. The annuitant has the capacity to engage in substantial gainful work (SGA) as described in DCM 10.3.3 and 10.3.4.

The month in which the annuitant returns to full-time work, with no significant medical restrictions and acknowledges that medical improvement has occurred, and DBD expected the annuitant's impairment(s) to improve;

The first month the annuitant was told by his or her physician that they could return to work provided there is not substantial conflict between the physician's and the annuitant's statements regarding the annuitant's awareness of his or her capacity for work and the earlier date is supported by the medical evidence.

The month the evidence shows that the annuitant is no longer disabled under the rules set out in DCM 10.3, sections 3, 4, 5 and 6, and they were disabled only for a specified period of time in the past.

2. In Other Than Death and Medical Improvement Cases

In non-medical improvement cases, a disability will end:

The month DBD mails the annuitant a notice saying that DBD finds that they are no longer disabled based on evidence showing there has been no medical improvement in the annuitant's impairments related to the ability to work but the annuitant has the capacity to engage in substantial gainful work and one of the exceptions to medical improvements set out in DCM 10.3.5 applies.

The month in which the annuitant actually does substantial gainful activity where such annuitant is not entitled to a trial work period;

The first month in which the annuitant failed without good cause to do what DBD asked, when the rule set out in DCM 10.3.5(B) (2) applies;

The first month in which the question of continuing disability arose and DBD could not locate the annuitant after a suitable investigation (see DCM 10.3.5(B) (3));

The first month in which the annuitant failed without good cause to follow prescribed treatment (see DCM 10.3.5(B) (4));

B. Termination of Entitlement to and Payment of a Disability Annuity

1. Death

2. Medical Improvement

In medical improvement cases, entitlement to a disability annuity ends on the last day of the second month following the month in which disability ceased. Payment of the disability annuity will stop on the last day of the second month following the month in which disability ends or on the last day of the first month following the month the initial cessation notice is sent by DBD, whichever date is later. Any payment received after the payment termination date is considered an overpayment.

EXAMPLE 1: The employee recovered from his or her disability in February 1990, the month the initial cessation letter was released. No work was involved. The last day of the second month following the month in which recovery occurred in this case is April 30, 1990. Therefore, no annuity is payable for any month after April 1990. The check dated May 1, 1990 is payable because it represents the April 1990 payment. Benefits should be terminated effective May 1, 1990.

EXAMPLE 2: The employee recovered from his or her disability in November 1989. The initial cessation letter was released in February 1990. Payment of the disability annuity ends on the last day of the month following the month in which the letter was released. Therefore, no annuity is payable for any month after March 1990. The check dated April 1, 1990, is payable because it represents the March 1990 payment.

NOTE: See DCM 10.6 for termination procedure. Any annuity suspended for an indefinite period or termination cases involving an overpayment should be referred by the CDR examiner to the appropriate post section (retirement or survivor) for determination of

overpayments. In employee termination or indefinite suspension cases which do not involve an overpayment, the CDR examiner should refer the case to the DBD-RASI examiner who will notify the Sickness and Unemployment Benefits section of the termination (see RCM 5.9.4B).

3. Reason Other Than Death or Medical Improvement

If the annuitant demonstrates the ability to perform the duties of his or her regular railroad occupation or is able to engage in substantial gainful activity, or fails to cooperate with the Board, entitlement to a disability annuity will end on the last day of the second month following the month in which disability ceased. Payment of the disability annuity will stop on the last day of the second month following the month in which disability ends.

C. Converting A Disability Annuity To An Age and Service Annuity

The Social Security Administration converts disability annuities to age and service annuities in order to effect a change in trust funds.

Under the Railroad Retirement Act, we do not switch from a disability annuity to an age and service (A&S) annuity for trust fund reasons. However, at full retirement age (FRA), a disability annuity ends and the individual is deemed to have filed an application for an A&S annuity. At that time, the annuity will be treated the same as a regular FRA annuity. This is a continuous entitlement with no disruption in payments. DBD does not have to police these cases, and we do not change our coding.

NOTE: See RCM 2.2.20 regarding earnings restrictions on widow(er)s over age 60.

10.2 Occupational Disabilities

10.2.1 Effects Of Work On Occupational Disability

A. Adjusting disability onset when the employee works despite impairment - An employee who has stopped work in his or her regular railroad occupation due to a permanent physical or mental impairment(s) may make an effort to return to work in his or her regular railroad occupation. If the employee is subsequently forced to stop that work after a short time because of his or her impairment(s), DBD will generally consider that work as an unsuccessful work attempt. (See DCM 10.5.3) In this situation, DBD may determine that the employee became disabled for work in his or her regular railroad occupation before the last date the employee worked in his or her regular railroad occupation. No annuity will be payable, however, until after the last date worked.

B. Occupational disability annuitant work restrictions - The restrictions which apply to an annuitant who is disabled for work in his or her regular railroad occupation are found in DCM 10.1.5.

10.2.2 Evaluation For Recovery From Disability For Work In The Regular Railroad Occupation

In evaluating annuitants receiving an occupational disability, there must be significant medical improvement related to the beneficiary's ability to return to his regular railroad occupation, rather than the ability to engage in substantial gainful activity (SGA). Some examples of improvement in an individual's impairment, but not to the point where the employee could return to his regular railroad occupation are:

- An individual who has had a laryngectomy with a stoma. Although he may be able to use artificial devices for speech, he could not work in a dusty environment because of the risk of infection.

- An individual with a hip or knee replacement. Although the artificial joint may relieve pain and stabilize the joint to some extent, he may be forever precluded from work that requires kneeling, crawling and other movements requiring acute flexion of the joint.

- An individual with a seizure disorder that may have responded to drug therapy. Although the number of seizures may be reduced, he may be forever precluded from working at heights, on ladders, and on scaffolds.

- An individual with an impairment caused by exposure to environmental factors that are inherent to his railroad job. Although he may improve if no longer exposed to these factors, his condition will continue to affect his ability to work in specific occupations.

EXAMPLE 1: The individual has allergies which cause contact dermatitis when exposed to creosote (a railroad track tie preservative). Such an individual could not work as a track laborer even if his condition cleared up when he quit working.

EXAMPLE 2: The individual has a respiratory problem resulting from exposure to welding fumes or diesel exhaust. Such an individual could not work as a welder or an engineer even if his condition cleared up when he quit working.

Such cases may be classified as Medical Improvement Not Expected (MINE) cases.

NOTE: Administrative factors, such as carrier disqualification, must also be considered.

A. General - Disability for work in the regular railroad occupation will end if:

1. There is medical improvement in the annuitant's impairment(s) to the extent that the annuitant is able to perform the duties of his regular railroad occupation; or

2. The annuitant demonstrates the ability to perform the duties of his regular railroad occupation. RRB regulations provide for unsuccessful work attempts, trial work periods, and re-entitlement periods before terminating a disability annuity because of the annuitant's return to work. See DCM 10.5 for procedure on unsuccessful work attempts, trial work periods, and re-entitlement periods.

B. Payment of the disability annuity during the trial work period and the re-entitlement period

1. The employee who is entitled to an occupational disability annuity will not be paid an annuity for each month in the trial work period or re-entitlement period in which they

- Work for an employer covered by the Railroad Retirement Act; or

- Earn more than the current monthly disability earnings limit after deduction of disability related work expenses in employment or self-employment. Refer to the chart in FOM 1125.5.2 for the monthly and annual earnings limits.

2. If the employee's occupational disability annuity is stopped because of work during the trial work period or re-entitlement period, and the employee discontinues that work before the end of either period, the disability annuity may be started again without a new application and a new determination of disability.

C. Notice that an annuitant is no longer disabled - The procedures explaining DBD's responsibilities in notifying the annuitant, and the annuitant's rights when the disability annuity is stopped are found in DCM 10.6.

10.2.3 Initial Evaluation Of A Previous Occupational Disability

A. In some cases, DBD may determine that a claimant is not currently disabled for work in his or her regular railroad occupation but was previously disabled for a specified period of time in the past. This can occur when

- The disability application was filed before the claimant's occupational disability ended, but DBD did not make the initial determination of occupational disability until after the claimant's disability ended; or

- The disability application was filed after the claimant's occupational disability ended but no later than the 12th month after the month the disability ended.

B. When evaluating a claim for a previous occupational disability, DBD follows the steps of initial occupational disability rating to determine whether an occupational disability existed, and follows the steps in 10.2.1 and 10.2.2 to determine when the occupational disability ended.

EXAMPLE 1: The claimant sustained multiple fractures to his left leg in an automobile accident that occurred on June 16, 1982. For a period of 18 month following the accident the claimant underwent 2 surgical procedures which restored the functional use of his leg. After a recovery period following the last surgery, the claimant returned to his regular railroad job on February 1, 1984. The claimant, although fully recovered medically and regularly employed, filed an application on December 3, 1984, for a determination of occupational disability for the period June 16, 1982 through January 31, 1984. A disability annuity is payable to the employee only for the period December 1, 1983 through January 31, 1984. An annuity may not begin an earlier than the 1st day of the 12th month before the month in which the application was filed.

EXAMPLE 2: The claimant is occupationally disabled using the same medical facts disclosed above, beginning June 16, 1982 (the date of the automobile accident). The claimant files an application for an occupational disability annuity, dated December 1, 1983. However, as of February 1, 1984, and before DBD makes a disability determination, the claimant returns to his regular railroad job and is no longer considered occupationally disabled. DBD reviews the claimant’s application in May of 1984 and finds them occupationally disabled for the period June 16, 1982 through January 31, 1984. A disability annuity is payable to the employee from December 1, 1982 through January 31, 1984.

10.3 Disability For Any Regular Employment

10.3.1 Determining Whether Disability Annuity Continues Or Ends

The RRB is under a statutory duty to periodically review every annuitant's disability until the employee or child annuitant reaches full retirement age and the widow(er) annuitant reaches age 60. Please note that widow(er) medicare entitlement is under review until age 65. During these periodic reviews, there are a number of factors to be considered. First, consider whether the annuitant has worked and by doing so, demonstrated the ability to engage in substantial gainful activity. If so, the disability will end. Next consider whether there has been any medical improvement in the annuitant's impairment(s) and, if so, whether this medical improvement is related to the ability to do work. If the impairments have not medically improved, the examiner must consider whether one or more of the

exceptions to medical improvement applies. (See DCM 10.3.5.) If medical improvement related to ability to work has not occurred and no exception applies, the disability will continue.

NOTE: Even when medical improvement related to work has occurred or an exception applies, the examiner must show that the annuitant is currently able to engage in substantial gainful activity before they can find that the annuitant is no longer disabled.

10.3.2 The Sequential Evaluation Process

The continuing disability review may cease and the disability may be continued at any point if the examiner determines that there is sufficient evidence to find that the annuitant is still unable to engage in substantial gainful activity. The review consists of an eight-step process. Each step of the process taken must be documented.

The steps are as follows:

1. Is the annuitant engaging in substantial gainful activity? If he is (and any applicable trial work period has been completed), find the disability to have ended;

2. If the annuitant is not engaging in substantial gainful activity, does he have an impairment or combination of impairments which meets or equals the severity of an impairment listed in Appendix 1. If the annuitant's impairment(s) does meet or equal the level of severity of an impairment listed in Appendix 1, find his disability to continue;

3. If the annuitant's impairment(s) does not meet or equal the level of severity of an impairment listed in Appendix 1, has there been medical improvement as defined in DCM 10.3.3(A)? If there has been medical improvement as shown by a decrease in medical severity, see step 4. If there has been no decrease in medical severity, then there has been no medical improvement. (See step 5);

4. If there has been medical improvement, the examiner must determine whether it is related to the annuitant's ability to do work in accordance with paragraphs A through D of DCM 10.3.3, (i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination). If medical improvement is not related to the annuitant's ability to do work, see step 5. If medical improvement is related to the annuitant ability to do work, see step 6;

5. If the examiner found at step 3 that there has been no medical improvement or if he found at step 4 that the medical improvement is not

related to the annuitant's ability to work, the examiner must consider whether any of the exceptions in DCM 10.3.5 apply. If none of them apply, disability continues. If one of the first group of exceptions to medical improvements applies, the disability ends. The second group or exceptions to medical improvement may be considered at any point in this process;

6. If medical improvement is shown to be related to the annuitant's ability to do work or if one of the first groups of exceptions to medical improvement applies, determine whether all of the annuitant's current impairments in combination are severe. This determination will consider all current impairments and the impact of the combination of those impairments on the ability to function. If the residual functional capacity assessment in step 4 above shows significant limitation of ability to do basic work activities, see step 7. When the evidence shows that all current impairments in combination do not significantly limit physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature, and the annuitant will no longer be considered to be disabled;

7. If the annuitant's impairment(s) is severe, assess his current ability to engage in substantial gainful activity. That is, assess the annuitant's residual functional capacity based on all of his current impairments and consider whether he can still do work that was done in the past. If he can do such work, disability will be found to have ended; and

8. If the annuitant is not able to do work he has done in the past, consider one final step. Given the residual functional capacity assessment and considering the annuitant's age, education and past work experience, can he do other work? If the annuitant can do other work, disability will be found to have ended. If he cannot do other work, disability will be found to continue.

In cases that are not of listing severity, medical improvement may permit work at a lower level of exertion, but not at a higher level of exertion. If the individual's past relevant work (PRW) was low-exertion work, any significant improvement may result in a decision supporting termination based on an ability to return to the low-exertion PRW.

Conversely, medical improvement may occur, but not to the point at which the annuitant would be found no longer disabled on a medical vocational basis.

EXAMPLE: An amputee unable to wear a prosthetic device was initially rated with a listing level impairment. After a passage of time, enough healing occurred to permit ambulation with prosthesis. This may permit an RFC for light or sedentary work. But if the individual is age 55 or older, this RFC will still result in a finding of disability.

10.3.3 Terms And Definitions Applicable In Disability For Any Regular Employment Situations

A. Medical improvement - Medical improvement is any decrease in the medical severity of an impairment(s) which was present at the time of the most recent favorable medical decision that the annuitant was disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on a comparison of prior and current medical evidence showing changes (improvement) in the symptoms, signs or laboratory findings associated with the impairment(s).

EXAMPLE 1: The annuitant was awarded a disability annuity due to a herniated disc. At the time of the DPS's prior decision granting the annuity, he had had a laminectomy. Postoperatively, a myelogram still shows evidence of a persistent deficit in his lumbar spine. The was pain in his back, and a burning sensation in his right foot and leg. There were no muscle weaknesses or neurological changes and a modest decrease in motion in his back and leg. When DPS reviewed the annuitant's claim to determine whether his disability should be continued, his treating physician reported that he had seen the annuitant regularly every 2 to 3 months for the past 2 years. No further myelograms had been done, complaints of pain in the back and right leg continued especially on sitting or standing for more than a short period of time. The annuitant's doctor further reported a moderately decreased range of motion in the annuitant's back and right leg, but again no muscle atrophy occurred because there has been no decrease in the severity of the annuitant's back impairment as shown by changes in symptoms, signs or laboratory findings.

EXAMPLE 2: The annuitant was awarded a disability annuity due to rheumatoid arthritis. At the time, laboratory findings were positive for this impairment. The annuitant's doctor reported persistent swelling and tenderness of the annuitant's fingers and wrists and that he complained of joint pain. Current medical evidence shows that while laboratory tests are still positive for rheumatoid arthritis, the annuitant's impairment has responded favorably to therapy so that for the last year his fingers and wrists have not been significantly swollen or painful. Medical improvement has occurred because there has been a decrease in the severity of the annuitant's impairment as documented by the current symptoms and signs reported by his physician. Although the annuitant's impairment is subject to temporary remission and exacerbations, the improvement that has occurred has been sustained long enough to permit a finding of medical improvement. DPS would then determine if this medical improvement is related to the annuitant's ability to work.

B. Medical improvement not related to ability to do work - Medical improvement is not related to the annuitant's ability to work if there has been a decrease in the severity of the impairment(s) (as defined in

paragraph A of this section) present at the time of the most recent favorable medical decision, but no increase in that annuitant's functional capacity to do basic work activities as defined in paragraph D of this section. If there has been any medical improvement in an annuitant's impairment(s), but it is not related to the annuitant's ability to do work and none of the exceptions applies, the annuity will be continued.

EXAMPLE: An annuitant was 65 inches tall and weighed 246 pounds at the time his disability was established. He had venous insufficiency and persistent edema in his leg. At the time, the annuitant's ability to do basic work activities was affected because he was able to sit for 6 hours, but was able to stand or walk only occasionally. At the time of DPS's continuing disability review, the annuitant had undergone a vein stripping operation. He now weighed 220 pounds and had intermittent edema. He is still able to sit for 6 hours at a time and to stand or walk only occasionally although he reports less discomfort on walking. Medical improvement has occurred because there has been a decrease in the severity of the existing impairment as shown by his weight loss and the improvement in his edema. This medical improvement is not related to his ability to work, however, because his functional capacity to do basic work activities (i.e., the ability to sit, stand and walk) has not increased.

C. Medical improvement that is related to ability to do work - Medical improvement is related to an annuitant's ability to work if there has been a decrease in the severity (as defined in paragraph A of this section) of the impairment(s) present at the time of the most recent favorable medical decision and an increase in the annuitant's functional capacity to do basic work activities as discussed in paragraph D of this section. A determination that medical improvement related to an annuitant's ability to do work has occurred does not, necessarily, mean that such annuitant's disability will be found to have ended unless it is also shown that the annuitant is currently able to engage in substantial gainful activity as discussed in paragraph E of this section.

EXAMPLE 1: The annuitant has a back impairment and has had a laminectomy to relieve the nerve root impingement and weakness in his left leg. At the time of DPS's prior decision, basic work activities were affected because he was able to stand less than 6 hours, and sit no more than 1/2 hour at a time. The annuitant had a successful fusion operation on his back about 1 year before DPS's review of his entitlement.

At the time of DPS's review, the weakness in his leg has decreased. The annuitant's functional capacity to perform basic work activities now is unimpaired because he now has no limitation on his ability to sit, walk, or stand. Medical improvement has occurred because there has been a decrease in the severity of his impairment as demonstrated by the deceased weakness in his leg. This medical improvement is related to his

ability to work because there has also been an increase in his functional capacity to perform basic work activities (or residual functional capacity) as shown by the absence of limitation on his ability to sit, walk, or stand. Whether or not his disability is found to have ended, however, will depend on DPS's determination as to whether he can currently engage in substantial gainful activity.

EXAMPLE 2: The annuitant was injured in an automobile accident receiving a compound fracture to his right femur and a fractured pelvis. When he applied for disability annuity 10 months after the accident his doctor reported that neither fracture had yet achieved solid union based on his clinical examination. X-rays supported this finding. The annuitant's doctor estimated that solid union and a subsequent return to full weight bearing would not occur for at least 3 more months. At the time of the continuing disability review 6 months later, solid union had occurred and the annuitant had been returned to full weight-bearing for over a month. His doctor reported this and the fact that his prior fractures no longer placed any limitation on his ability to walk, stand, and lift, and, that in fact, he could return to full-time work if he so desired.

Medical improvement has occurred because there has been a decrease in the severity of the annuitant's impairments as shown by X-ray and clinical evidence of solid union had his return to full weight-bearing. This medical improvement is related to his ability to work because he no longer meets the same listed impairment in Appendix I. Whether or not the annuitant's disability is found to have ended will depend on the DPS's determination as to whether he can currently engage in substantial gainful activity (see step D).

D. Functional capacity to do basic work activities

1. Under the law, disability is defined, in part, as the inability to do any regular employment by reason of a physical or mental impairment(s). "Regular employment" is defined as "substantial gainful activity". In determining whether the annuitant is disabled under the law, DPS will measure, therefore, how and to what extent the annuitant's impairment(s) has affected his or her ability to do work. DPS does this by looking at how the annuitant's functional capacity for doing basic work activities has been affected. Basic work activities mean the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and non exertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes in a work setting and dealing with both supervisors and fellow workers. The annuitant who has no impairment(s) would be able to do all basic work activities at normal levels; they would have an unlimited

functional capacity to do basic work activities. Depending on its nature and severity, an impairment(s), is called his or her residual functional capacity. Unless an impairment is so severe that it is deemed to prevent the annuitant from doing substantial gainful activity (i.e., the impairment(s) meets or equals the severity of a listed impairment in Appendix 1), it is this residual functional capacity that is used to determine whether the annuitant can still do his or her past work or, in conjunction with his or her age, education and work experience, do any other work.

2. A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities. Vascular surgery (e.g., femoropopliteal bypass) may sometimes reduce the severity of the circulatory complications of diabetes so that better circulation results and the annuitant can stand or walk for longer periods. When new evidence showing a change in medical findings established that both medical improvement has occurred and the annuitant's functional capacity to perform basic work activities, or residual functional capacity, has increased, DPS will find that medical improvement which is related to the annuitant's ability to do work has occurred. A residual functional capacity assessment is also used to determine whether an annuitant can engage in substantial gainful activity and, thus, whether they continue to be disabled (see paragraph E of this section).

3. Many impairment-related factors must be considered in assessing an annuitant's functional capacity for basic work activities. Age is one key actor. Medical literature shows that there is a gradual decrease in organ function with age; that major losses and deficits become irreversible over time and that maximum exercise performance diminished with age. Other changes related to sustained periods o inactivity and the aging process include muscle atrophy, degenerative joint changes, decrease in range of motion, and changes in the cardiac and respiratory systems which limit the exertional range.

4. Studies have also shown that the longer the annuitant is away from the workplace and is inactive, the more difficult it becomes to return to ongoing gainful employment. In addition, a gradual change occurs in most jobs so that after about 15 years (or 5 years if a disability decision is being made pursuant to Social Security Administration regulations), it is no longer realistic to expect that skills and abilities acquired in these jobs will continue to apply to the current workplace. Thus, if the annuitant is age 50 or over and has been receiving a disability annuity for a considerable period of

time, consider this factor along with his or her age in assessing the residual functional capacity. This will ensure that the disadvantages resulting from inactivity and the aging process during a longer period of disability will be considered. In some instances where available evidence does not resolve what the annuitant can or cannot do on a sustained basis, DPS can provide for special work evaluations or other appropriate testing.

E. Ability to engage insubstantial gainful activity - In most instances, the examiner must show that the annuitant is able to engage in substantial gainful activity before terminating his or her annuity. When doing this, consider all of the annuitant's current impairments not just that impairment(s) present at the time of the most recent favorable determination. If the examiner cannot determine that the annuitant is still disabled based on medical considerations alone, use the new symptoms, signs and laboratory findings to make an objective assessment of functional capacity to do basic work activities (or residual functional capacity) and consider vocational factors.

F. Evidence and basis for the decision - Decisions under this section will be made on a neutral basis without any initial inference as to the presence or absence of disability being drawn from the fact that the annuitant had previously be determined to be disabled. Consider all of the evidence the annuitant submits, as well as all evidence obtained from treating physician(s) and other medical or nonmedical sources. What constitutes "evidence" and DPS procedures for obtaining it will be set out in DCM Chapter 3 . DPS will review all medical evidence received to determine whether a disability continues.

G. Point of comparison - For purposes of determining whether medical improvement has occurred, compare the current medical severity of that impairment(s), which was present at the time of the most recent favorable medical decision that the annuitant was disabled or continued to be disabled, to the medical severity of that impairment(s) at that time. If medical improvement has occurred, compare the annuitant's current functional capacity to do basic work activities (i.e., his or her residual functional capacity) based on this previously existing impairment(s) with the annuitant's prior residual functional capacity in order to determine whether the medical improvement is related to his or her ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether the annuitant was disabled or continued to be disabled which became final.

10.3.4 Determining Medical Improvement And Its Relationship To The Annuitant's Ability To Do Work

A. General - Paragraphs A, B, and C of Chapter 10.3.3 discuss what is meant by medical improvement, medical improvement not related to the ability to work and medical improvement that is related to the ability to work. How DPS will arrive at the decision that medical improvement has occurred and its relationship to the ability to do work, is discussed in paragraphs B and C of this section.

B. Determining that medical improvement is related to ability to work - If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, the rating examiner must then determine if it is related to the annuitant's ability to do work. In determining whether medical improvement that has occurred is related to the annuitant's ability to do work, the examiner should assess the annuitant's residual functional capacity (RFC) based on the current severity of the impairment(s) which was present at the annuitant's last favorable medical decision. Unless the increase in the current RFC is based on changes in the signs, symptoms, or laboratory findings, any medical improvement that has occurred will not be considered to be related to the annuitant's ability to work.

C. Additional factors and considerations

1. RFC not previously determined - If the most recent favorable decision was based on the fact that the annuitant's impairment(s) at the time met or equaled the severity contemplated by the Listing of Impairments, an assessment of his or her RFC would not have been made. If medical improvement has occurred and the severity of the prior impairment(s) no longer meets or equals the same listing, find that the medical improvement was related to the annuitant's ability to work. This is because meeting or equaling the listing level of severity is evidence that the annuitant is unable to work. Since meeting or equaling the level of severity of the listing deems an annuitant unable to work, not meeting the level of severity of the listing deems an annuitant potentially able to work. Being deemed "potentially able to work" simply means that the rating examiner can make the determination as to whether the annuitant can currently engage in gainful activity. The examiner must, of course, also establish that the annuitant can currently engage in gainful activity before finding that his or her disability has ended.

2. Prior RFC assessment made - Compare the RFC assessment used in making the most recent favorable medical decision with the RFC assessment based on current evidence to determine whether an

annuitant's functional capacity for basic work activities has increased. Do not attempt to reassess the prior RFC.

3. Prior RFC should have been assessed but wasn't - In cases where an RFC assessment should have been made for the prior most favorable decision but wasn't either because this assessment is missing from the annuitant's file or because it was not done, the doctor or medical consultant must reconstruct the residual functional capacity. In reconstructing the RFC, assign the maximum functional capacity consistent with an allowance. This reconstructed RFC should accurately and objectively assess the annuitant's functional capacity to do work.

   EXAMPLE: The annuitant was previously found to be disabled on the basis that while his impairment did not meet or equal a listing, it did prevent them from doing his past or any other work. The prior examiner did not, however, include a residual functional capacity assessment in the rationale of that decision and a review of the prior evidence does not show that such an assessment was ever made. If a decrease in medical severity, i.e., medical improvement, has occurred, the residual functional capacity based on the current level of severity of the annuitant's impairment will have to be compared with his residual functional capacity based on its prior severity in order to determine if the medical improvement is related to his ability to do work. In order to make this comparison, the medical consultant must review the prior evidence and make an objective assessment of the annuitant's residual functional capacity at the time of its most recent favorable medical determination, based on the symptoms, signs and laboratory findings as they then existed.

4. Impairment subject to temporary remission - If the evidence shows that the annuitant's impairment(s) is subject to temporary remission, carefully consider the history of the impairment(s), including the occurrence of any prior remissions, and the prospects for future worsening. A remission that is only temporary, that is, less than one year, will not warrant a finding of medical improvement.

5. When the prior file cannot be located - If the prior file cannot be located, determine whether the annuitant is able to engage in substantial gainful activity. If the annuitant can engage in SGA, do not attempt to reconstruct prior evidence. If the annuitant is not able to engage in SGA, his or her disability will continue unless one of the second group of exceptions applies (see 10.3.5(B)).

10.3.5 Exceptions To Medical Improvement

A. The First Group of Exceptions to Medical Improvement - General - The law provides for certain limited situations when the annuitant's disability can be found to have ended even though medical improvement has not occurred. These exceptions to medical improvement are intended to provide a way of finding that the annuitant is no longer disabled in those limited situations where, even though there has been no decrease in the severity of the impairment(s), evidence shows that the annuitant should no longer be considered disabled or never should have been considered disabled.

For one of these exceptions to apply, the examiner must also show that taking all of the annuitant's current impairment(s) into account, not just those that existed at the time of the most recent favorable medical decision, the annuitant is now able to engage in SGA before his or her annuity can be found to have ended.

As part of the exception review process, ask the annuitant about any medical or vocational therapy that they have received or are receiving. The examiner should use these answers, the evidence gathered and all other evidence as the basis for finding that an exception applies.

1. Substantial evidence shows that the annuitant is the beneficiary of advances in medical or vocational therapy or technology (related to his or her ability to work) - Advances in medical or vocational therapy or technology are improvements in a treatment or rehabilitative methods which have increased the annuitant's ability to do basic work activities. To apply this exception, the examiner has to show by substantial evidence that the annuitant has been the beneficiary of services which reflect these advances and they have favorably affected the severity of his or her impairment (s) or ability to do basic work activities.

   This decision must always be based on new medical evidence and a new RFC assessment. Since, in many instances, an advance medical or vocational technology will result in a decrease in severity as shown by symptoms, signs and laboratory findings which will meet the definition of medical improvement, this exception will see very limited application.

2. Substantial evidence shows that the annuitant has undergone vocational therapy (related to his or her ability to work) - Vocational therapy (related to the annuitant's ability to work) may include, but is not limited to, additional education, training, or work experience that improves his or her ability to meet the vocational requirements of more jobs. This decision will be based on substantial evidence

which includes new medical evidence and a new residual functional capacity assessment. If, at the time of the continuing disability review the annuitant has not completed vocational therapy which could affect the continuance of his or her disability, review such annuitant's claim upon completion of the therapy.

EXAMPLE 1: The annuitant was found to be disabled because the limitations imposed on them by their impairment(s) allowed them to only do work that was at a sedentary level of exertion. The annuitant's prior work experience was work that required a medium level of exertion with no acquired skills that could be transferred to sedentary work. Their age, education, and past work experience at the time did not qualify them for work that was below this medium level of exertion. The annuitant enrolled in and completed a specialized training course which qualifies them for a job in data processing as a computer programmer in the period since they were awarded a disability annuity. On review of their claim, current evidence shows that there is no medical improvement and that they can still do only sedentary work. As the work of a computer programmer is sedentary in nature, they are now able to engage in substantial gainful activity when their new skills are considered.

EXAMPLE 2: The annuitant was previously entitled to a disability annuity because the medical evidence and assessment of their residual functional capacity showed they could only do light work. Their prior work was considered to be of a heavy exertional level with no acquired skills that could be transferred to light work. Their age, education, and past work experience did not qualify them for work that was below the heavy level of exertion. The current evidence and residual functional capacity show there has been no medical improvement and that they can still do only light work. Since they were originally entitled to a disability annuity, their vocational rehabilitation agency enrolled them in and they successfully completed a trade school course so that they are now qualified to do small appliance repair. This work is light in nature, so when their new skills are considered, they are now able to engage in substantial gainful activity even though there has been no change in their residual functional capacity.

3. <u>Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the annuitant's impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision</u> - Changing methodologies and advances in medical and other diagnostic or evaluative techniques have given, and will continue to give, rise to improved methods for measuring and documenting the effect of various impairments on the ability to do work. Where, by such new or improved methods,

substantial evidence shows that the annuitant's impairment(s) is not as severe as was determined at the time of the most recent favorable medical decision, such evidence may serve as a basis for finding that the annuitant can engage in substantial gainful activity and is no longer disabled. In order to be used under this exception, however, the new or improved techniques must have become generally available after the date of DPS's most recent favorable medical decision.

The RRB will determine which methods and techniques are new and improved and when they become generally available. The RRB will learn about these new techniques when they are presented as evidence in specific cases and when they are discussed in medical literature by medical professional groups and other governmental entities. The RRB will develop a listing of new techniques and publication of this listing in the Federal Register will determine the date the duty to inform our annuitant of these changes through this listing and its publication in the Federal Register.

EXAMPLE: The electrocardiographic exercise test has replaced the Master's 2-step test as a measurement of heart function since the time of the annuitant's last favorable medical decision. Current evidence shows that the annuitant's impairment, which was previously evaluated based on the Master's 2-step test, is not now as disabling as was previously thought. If, taking all his current impairments into account, the annuitant is now able to engage in substantial gainful activity, this exception would be used to find that he is no longer disabled even if medical improvement has not occurred.

4. Substantial evidence shows that the prior disability decision was in error - There are three situations in which an exception to medical improvement will be found based on error. The three situations are: (a) when substantial evidence on its face shows that the decision should not have been made, (b) when required and material evidence of the severity of the annuitant's impairment(s) was missing, and (c) when new evidence relating to the prior determination (of allowance or continuance) refutes the conclusions that were based upon the prior evidence. Apply this exception to medical improvement if substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to a disability annuity was made, or newly obtained evidence which relates to that determination) demonstrates that a prior determination was in error.

a. Errors on the face of the evidence - Substantial evidence shows on its face that the decision in question should not have been made (e.g., the evidence in file such as pulmonary function study values was misread or an adjudicative standard such as a listing in Appendix 1 or a medical/vocational rule in Appendix 2 was misapplied).

EXAMPLE 1: The annuitant was granted a disability annuity when it was determined that his epilepsy met Listing 11.02. This listing calls for a finding of major motor seizures more frequently than once a month as documented by EEG evidence and by a detailed description of a typical seizure pattern. A history of either diurnal episodes or nocturnal episodes with residuals interfering with daily activities is also required. On review, it is found that a history f the frequency of his seizures showed that they occurred only once or twice a year. The prior decision would be found to be in error, and whether the annuitant was still considered to e disabled would be based on whether he could currently engage insubstantial gainful activity.

EXAMPLE 2: The annuitant's prior award of a disability annuity was based on vocational rule 201.14 in Appendix 2. This rule applies to a person age 50-54 who has at least a high school education, whose previous work was entirely at semiskilled level, and who can do only sedentary work. On review it is found that at the time of the prior determination the annuitant was actually only age 46 and vocational rule 201.21 should have been used. This rule would have called for a denial of his claim and the prior decision is found to have been in error. Continuation of his disability would depend on a finding of his current inability to engage in substantial gainful activity.

b. Required and material evidence is missing - This situation arises when at the time of the prior evaluation, required and material evidence of the severity of the annuitant's impairment(s) was missing. This evidence becomes available upon review, and substantial evidence demonstrates that had such evidence been present at the time of the prior determination, disability would not have been found.

EXAMPLE: The annuitant was found disabled on the basis of chronic obstructive pulmonary disease. The severity of his impairment was documented primarily by pulmonary function testing results. The evidence showed that he could

do only light work. Spirometric tracings of this testing, although required, were not obtained, however. On review, the original report is resubmitted by the consultative examining physician along with the corresponding spirometric tracing. A review of the tracings shows that the test was invalid. Current pulmonary function testing supported by spirometric tracings reveals that the annuitant's impairment does not limit his ability to perform basic work activities in any way. Error is found based on the fact that required material evidence, which was originally missing, now becomes available and shows that if it had been available at the time of the prior determination, disability would not have been found.

c. New evidence contradicts the conclusions of prior evidence - This situation arises when substantial evidence, which is new evidence relating to the prior determination (of allowance or continuance), refutes the conclusions that were based upon the prior evidence (e.g., a tumor thought to be malignant was later shown to have actually been benign.) Substantial evidence must show that had the new evidence (which relates to the prior determination) been considered at the time of the prior decision, the disability would not have been allowed or continued. A substitution of current judgment for that used in the prior favorable decision will not be the basis for applying this exception.

EXAMPLE: The annuitant was previously found entitled to a disability annuity on the basis of diabetes mellitus which the prior adjudicator believed was equivalent to the level of severity contemplated in the Listing of Impairments. The prior record shows that the annuitant has "brittle" diabetes for which he was taking insulin. The annuitant's urine was 3+ for sugar, and he alleged occasional hypoglycemic attacks caused by exertion. His doctor felt the diabetes was never really controlled because he was not following his diet or taking his medication regularly. On review, symptoms, signs and laboratory findings are unchanged. The current adjudicator feels, however, that the annuitant's impairment clearly does not equal the severity contemplated by the listings. Error cannot be found because it would represent a substitution of current judgment for that of the prior adjudicator that the annuitant's impairment equaled a listing. The exception for error will not be applied retroactively under the conditions set out above unless the conditions for reopening the prior decision are met.

5. The annuitant is currently engaging in substantial gainful activity - If the annuitant is currently engaging in substantial gainful activity, before DPS determines whether they are no longer disabled because of their work activity, DPS will consider whether they are entitled to a trial work period as set out in DCM 10.5.4. DPS will find that the annuitant's disability has ended in the month in which they demonstrated the ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply in determining whether the annuitant continues to have a disabling impairment(s) for purposes of deciding his or her eligibility for a reentitlement period.

B. The Second Group of Exceptions to Medical Improvement - General - In the second group of exceptions, the continuance decision will be made without a determination that the annuitant has medically improved or can engage in SGA.

1. A prior determination was fraudulently obtained - If DPS finds that any prior favorable determination was obtained by fraud, it may find that the annuitant is not disabled. In addition, DPS may reopen the claim.

2. Failure to cooperate - If there is a question about whether the annuitant continues to be disabled and DPS requests that they submit medical or other evidence or go for a physical or mental examination by a certain date, DPS will find that the annuitant's disability has ended if they fail (without good cause) to do what is requested. The month in which the annuitant's disability ends will be the first month in which they failed to do what was requested.

3. Inability to locate the annuitant - If there is a question about whether the annuitant continues to be disabled and DPS is unable to find them to resolve the question, DPS will suspend annuity payments. If, after a suitable investigation, DPS is still unable to locate the annuitant, DPS will determine that the annuitant's disability has ended. The month such annuitant's disability ends will be the first month in which the question arose and the annuitant could not be found.

4. Failure of the annuitant to follow prescribed treatment which would be expected to restore the ability to engage in substantial gainful activity - If treatment has been prescribed for the annuitant which would be expected to restore his or her ability to work, they must follow that treatment in order to be paid a disability annuity. If the annuitant is not following that treatment and they do not have good cause for failing to follow the treatment, DPS will find that their disability has ended. The month such annuitant's disability ends

will be the first month in which they failed to follow the prescribed treatment.

10.3.6 If The Annuitant Becomes Disabled By Another Impairment During The Continuance Determination

If a new severe impairment begins in or before the month in which the last impairment ends, DPS will find that the disability is continuing. The impairment need not be expected to last 12 months or to result in death, but it must be severe enough to keep the annuitant form doing substantial gainful activity, or severe enough so that they are still disabled.

10.4 Substantial Gainful Activity

10.4.1 General

The work that a claimant has done during any period in which the claimant believes they are disabled may show that the claimant is able to do work at the substantial gainful activity (SGA) level. If a claimant is able to engage in SGA, find that the claimant is not disabled for any regular employment under the Railroad Retirement Act. Even if the work the claimant has done was not SGA, it may show that the claimant is able to do more work than they actually did. Consider all medical and vocational evidence in the claimant's file to decide whether or not the claimant has the ability to engage in SGA.

10.4.2 Substantial Gainful Activity Defined

Substantial gainful activity is work activity that is both substantial and gainful.

A. Substantial work activity - Substantial work activity is work activity that involves doing a significant physical or mental activities. The annuitant's work may be substantial even if it is done on a part-time basis or if the annuitant does less, gets paid less, or has less responsibility than when the annuitant worked before.

B. Gainful work activity - Gainful work activity is work activity that the annuitant does for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

C. Some other activities - Generally, do not consider activities like taking care of one's self, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

10.4.3 General Information About Work Activity

A. The nature of the claimant's work - If the claimant's duties require use of the claimant's experience, skills, supervision and responsibilities, or contribute substantially to the operation of a business, this tends to show

that the claimant has the ability to work at the substantial gainful activity level.

B. How well the claimant performs - Consider how well the claimant does his or her work when determining whether or not the claimant is doing substantial gainful activity.

If the claimant's performance is satisfactory, this may be evidence that his or her work is SGA.

If the claimant is unable to work at a satisfactory level of performance because of his or her impairment, this is evidence that the work is not SGA.

If the claimant's work involves only minimal duties, this may be evidence that the work is not SGA.

C. The claimant's work is done under special conditions - Even though the work the claimant is doing takes into account his or her impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that the claimant has the necessary skills and ability to work at the substantial gainful activity level.

D. The claimant is self-employed - Supervisory, managerial, advisory or other significant personal services that the claimant performs as a self-employed person may show that the claimant is able to do substantial gainful activity.

E. Time spent in work - While the time the claimant spends in work is important, do not decide whether or not the claimant is doing substantial gainful activity only on that basis. Evaluate the work to decide whether it is substantial and gainful regardless of whether the claimant spends more time or less time at the job than workers who are not impaired and who are doing similar work as a regular means of their livelihood.

10.4.4 Evaluation Guides For An Employed Annuitant

A. General - Evaluating SGA consists of 3 steps:

1. Developing for gross earnings, employer subsidies, and impairment related work expenses;

2. Subtract the subsidies and IRWE's from the gross earnings; and

3. Determine the net earnings from employment. The net earnings are then compared with the earnings table in section B.2.

The earnings test is not applied mechanically. When making SGA evaluation, keep the following points in mind:

a. The claimant's earnings may show the annuitant has done substantial gainful activity - The amount of the claimant's earnings from work the claimant has done may show that they have engaged in substantial gainful activity. Generally, if the claimant worked for substantial earnings, this shows that they are able to do substantial gainful activity. On the other hand, the fact that the claimant's earnings are not substantial does not necessarily show that the claimant is not able to do substantial gainful activity. Generally, consider work that the claimant is forced to stop after a short time because of his or her impairment(s) as an unsuccessful work attempt (See DCM 10.5.3) and the claimant's earnings from that work will not show that the claimant is able to do substantial gainful activity.

b. Consider only the amounts the claimant earns

   (i) If the claimant's earnings are subsidized, the amount of the subsidy is not counted when determining whether or not the claimant's work is substantial gainful activity. Thus, where work is done under special conditions, consider only the part of the claimant's pay which the claimant actually "earns." For example, where a handicapped person does simple tasks under close and continuous supervision, do not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. A railroad or non-railroad employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If the claimant's work is subsidized and the claimant's railroad and non-railroad employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, investigate to see how much the claimant's work is worth.

   (ii) The following circumstances indicate a subsidy might exist:

      A. The employment is sheltered, or

      B. Childhood disability is involved, or

      C. Mental impairment is involved, or

      D. There appears to be a marked discrepancy between the amount of pay and the value of the services, or

      E. The employer, employee, or other interested party alleges that the employee does not fully ear his or her pay (e.g., the

employee receives unusual help from others in doing the work, or

F. The nature and severity of the impairment indicate that the employee receives unusual help from others in doing the work, or

G. The employee is involved in a government sponsored job training and employment program.

c. If the claimant is working in a sheltered or special environment - If the claimant is working in a sheltered workshop, the claimant may or may not be earning the amounts they are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that the claimant is not earning all they are being paid. Persons in military service being treated for a severe impairment usually continue to receive full pay. Therefore evaluate work activity in a therapy program while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

B. Earnings guidelines

1. How to determine "Countable Earnings." *

a. First determine gross earnings i.e., the total earnings reported for work activity. Gross earnings include payments in kind (e.g., room and board) which are made for the performance of work in lieu of cash

* "Countable earnings" are that portion of an individual's earnings representing the actual value of the work they performed. See worksheet IV of Appendix E for a summary sheet that can be used in making this determination.

b. Once gross earnings are determined, deduct:

(i) The amount of any subsidized earnings provided by the employer (See Sec. A.2) and

(ii) The amount of any impairment-related work expenses paid by the employee. (See 10.4.6)

c. Finally, compare the claimant's net or countable earnings with the applicable amounts shown in sec. 2, below. If a claimant's average "countable earnings" exceed the earnings guidelines, they will be found to engage in SGA.

NOTE: In those cases in which the earnings or work activity vary somewhat from month to month, the claimant's earnings will have to be averaged. (See Appendix D.)

2. Table of SGA earnings guidelines and effective dates

   a. All RRB Annuitants and all SSA Title II Blind and Non-blind Beneficiaries. Click here for chart: All RRB Annuitants and all SSA Title II Blind and Non-Blind Beneficiaries (1977 and earlier).

   b. RRB and SSA Title II Non-blind Beneficiaries. Amounts begin January 1st of the year unless otherwise indicated. Click here for chart: All RRB Annuitants and all SSA Title II Blind and Non-blind Beneficiaries (1978 and later).

   c. RRB and SSA Title II Blind Beneficiaries. Amounts begin on January 1st of the year unless otherwise indicated. Click here for chart: RRB and SSA Title II Blind Beneficiaries (1978 and later).

   d. If the claimant's earnings fall between the primary and secondary amounts - Consider other information in addition to the claimant's earnings, such as whether:

      - The disability application was filed after the claimant's occupational disability ended but no later than the 12th month after the month the disability ended; or

      - The claimant's work, although significantly less than that done by unimpaired persons, is clearly worth the amounts shown in the earnings guidelines according to pay scales in the claimant's community.

      If the work meets either of these tests, it is SGA.

10.4.5 Evaluation Guides For A Self-Employed Annuitant

A. General - DBD will consider the following three tests, two of which concern the amount of income received, when dealing with self-employed persons. This is because the amount of income the annuitant actually receives in self-employment may depend upon a number of different factors like capital

investment and profit sharing that tend to decrease the amount of current income. Consider that the annuitant has engaged in SGA if:

1. The comparability of work test - The annuitant's work activity, in terms of factors such as hour, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired persons in the annuitant's community who are in the same or similar businesses as their means of livelihood; or

2. The worth of work test - The annuitant's work activity, although not comparable to that of unimpaired persons, is clearly worth the amount shown in DCM10.4.4 B.2 when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employed person to do the work the annuitant is doing; or

3. The significant services and substantial income test - The annuitant renders services that are significant to the operation of the business and receives a substantial income from the business.

   (i) "Significant Services."

   Annuitants who are not farm landlords - If the annuitant is not a farm landlord and the annuitant operates a business entirely by themselves, and services that the annuitant renders are significant to the business. If the annuitant's business involves the services of more than one person, consider the annuitant to be rendering significant services if they contribute more than half the total time required for the management of the business or they render management services for more than 45 hours a month regardless of the total management time required by the business.

   Claimants who are farm landlords - If the claimant is a farm landlord consider the claimant to be rendering significant services if they materially participates in the production or the management of the things raised on the rented farm.

   Material Participation means that:

   1. The claimant furnishes a large portion of the material stock i.e., the machinery, tools, and livestock used on the farm, or

   2. The claimant furnishes the monies or assumes financial responsibility for the farm. Advising or consulting with the farm tenant or inspecting the farm's production is strong evidence that the annuitant is materially participating.

      NOTE: If the claimant was given social security wage credits based on their activity as a farm landlord and they continue in

these activities: consider the claimant to be rendering significant services.

Production means the physical work performed and the expenses incurred in producing the things raised on the farm. It includes activities like the actual work of planting, cultivating, and harvesting of crops, and the furnishing of machinery, implements, seed, and livestock.

Management of the production refers to services performed in making managerial decisions about the production of the crop, such as when to plant, cultivate, dust, spray or harvest. It includes advising and consulting, making inspections, and making decisions on matters, such as rotation of crops, the type of crops to be grown, the type of livestock to be raised, and the type of machinery and implements to be furnished.

(ii) "Substantial Income - Substantial income is net income after deductions are made for the reasonable value of any unpaid help, soil bank payments included as farm income, and any impairment-related work expenses. Consider this net income to be substantial if:

- It average more than the primary amounts described in DCM 10.4.4 B.2; or

- It averages less than the primary amounts described in DCM 10.4.4 B.2 but the livelihood which the annuitant gets from the business is either comparable to what it was before the annuitant became severely impaired or is comparable to that of unimpaired self-employed persons in the claimant's community who are in the same or similar businesses as their means of livelihood.

B. Blind Persons Operating Vending Machines

The Randolph-Sheppard Act (R-S Act) established a program for blind persons to operate vending facilities as a business on Federal property. Various states have established similar programs for blind persons to operate vending facilities as a business on state and local government property. A blind vendor who operates a vending facility may also receive income from vending machines that are located on the same property even though they doe not service, operate, or maintain the vending machines.

Social Security Ruling (SSR) 12-1p provides that income that blind self-employed vendors receive under the R-S Act and similar state programs from vending machines that are located on the same property but are not serviced, operated, or maintained by the blind vendor should not be counted toward SGA purposes.

On a case-by-case basis, if the evidence suggests that a blind applicant/annuitant may be a licensed vendor at a Federal, state, or other facility and a DEQY and/or report from The Work Number (TWN) shows that that income is likely to be SGA, the responsible adjudicating unit shall attempt development to find out if at least some of the total income is from vending machines. If at least some of the total income is from vending machines, then attempt to determine how much of the income was from vending machines which they service, operate, and maintain and how much was from vending machines which they do not service, operate, or maintain.

SSR 12-1p only applies to disability freeze and Medicare claims under the Social Security Act. After developing for the information in the previous paragraph, refer any case to Policy and Systems - RAC for a determination how that income should be treated for SGA purposes for disability claims under the Railroad Retirement Act.

10.4.6 Impairment Related Work Expenses

A. General - When figuring the claimant's earnings in making an SGA test, subtract the reasonable costs to the claimant of certain items and services which, because of his or her impairments, the claimant needs to be able to work. The costs are deductible even though the claimant also needs or uses the items and services to carry out daily living functions unrelated to his or her work. (See DCM 10.8 for Disability Related Work Expenses.)

B. Requirements for Deducting Impairment-Related Work Expenses - Deduct IRWE's if -

1. The claimant is disabled for any regular employment and not occupationally disabled;

2. The severity of the claimant's impairment(s) requires the claimant to purchase (or rent) certain items and services in order to work;

3. The claimant pays the cost of the item or service. No deduction will be allowed to the extent that payment has been, could be or will be made by another source. No deduction will be allowed to the extent that the claimant has been, could be, or will be reimbursed for such cost by any other source (such as through a private insurance plan, Medicare or Medicaid, or other plan or agency). For example, if the claimant purchases crutches for $80 but the claimant was, could be, or will be reimbursed $64 by some agency, plan, or program, deduct only $16.

4. The claimant pays for the item or service in a month they are working (in accordance with paragraph (D) of this section); and

5. The claimant's payment is in cash (including checks or other forms of money). Payment in kind is not deductible.

C. What Expenses may be Deducted

1. Payments for attendant care services

(i) If because of the claimant's impairment(s) the claimant needs assistance in traveling to and from work, or while at work the claimant needs assistance with personal functions (e.g., eating, toileting) or with work-related functions (e.g., reading, communicating), the payments the claimant makes for those services may be deducted.

(ii) If because of the claimant's impairment(s) the claimant needs assistance with personal functions (e.g., dressing administering medications) at home in preparation for going to and assistance in returning from work, the payments the claimant makes for those services may be deducted.

(iii) Deduct payments the claimant makes to a family member for attendant care services only if such person, in order to perform the services, suffers an economic loss by terminating his or her employment or by reducing the number of hours they worked.

Consider a family member to be anyone who is related to the claimant by blood, marriage or adoption, whether or not that person lives with the claimant.

(iv) If only part of the claimant's payment to a person is for services that come under the provisions of this section, deduct that part of the payment that is attributable to those services. For example, an attendant gets the claimant ready for work and helps the claimant in returning from work, which takes about 2 hours a day. The rest of the attendant's 8 hour day is spent cleaning the claimant's house and doing the claimant's laundry, etc. Deduct one-fourth of the attendant's daily wages as an impairment-related work expense.

2. Payment for medical devices - If the claimant's impairment(s) requires that the claimant utilize medical devices in order to work, the payments the claimant makes for those devices may be deducted. As used in this subparagraph, medical devices include durable medical equipment that can withstand repeated use, is customarily used for medical purposes, and is generally not useful

to a person in the absence of an illness or injury. Examples of durable medical equipment are wheelchairs, hemodialysis equipment, canes, crutches, inhalators and pacemakers.

3. Payments for prosthetic devices - If the claimant's impairment(s) requires that the claimant utilize a prosthetic device in order to work, the payments the claimant makes for that device can be deducted. A prosthetic device is that which replaces an internal body organ or external body part. Examples of prosthetic devices are artificial replacements of arms, legs and other parts of the body.

4. Payments for equipment

   (i) Work-related equipment - If the claimant's impairment(s) requires that the claimant utilize special equipment in order to do his or her job, the payments the claimant makes for that equipment may be deducted. Examples of work-related equipment are one-hand typewriters, vision aids, sensory aids for the blind, telecommunication devices for the deaf and tools specifically designed to accommodate a person's impairment(s).

   (ii) Residential modifications

   If the claimant is employed away from home, only the cost of changes made outside of the claimant's home to permit the claimant to get to his or her means of transportation (e.g., the installation of an exterior ramp for a wheelchair confined person or special exterior railings or pathways for someone who requires crutches) will be deducted. Costs relating to modifications of the claimant's home will not be deducted.

   If the claimant works at home, the costs of modifying the inside of the claimant's home in order to create a working space to accommodate the claimant's impairment(s) will be deducted to the extent that the changes pertain specifically to the space in which the claimant works. Examples of such changes are the enlargement of a doorway leading into the workspace or modification of the workspace to accommodate problems in dexterity. However, if the claimant is self-employed at home, any cost deducted as a business expense cannot be deducted as an impairment-related work expense.

   (iii) Non-medical appliances and equipment - Expenses for appliances and equipment that the claimant does not ordinarily use for medical purposes are generally not

deductible. Examples of these items are portable room heaters, air conditioners, humidifiers, dehumidifiers, and electric air cleaners. However, expenses for such items may be deductible when unusual circumstances clearly establish an impairment-related and medically verified need for such an item because it is for the control of the claimant's disabling impairment(s), thus enabling the claimant to work. To be considered essential, the item must be of such a nature that if it were not available to the claimant there would be an immediate adverse impact on the claimant's ability to function in his or her work activity. In this situation the expense is deductible whether the item is used at home or in the working place. An example would be the need for an electric air cleaner by a person with severe respiratory disease who cannot function in a non-purified air environment. An item such as an exercycle is not deductible if used for general physical fitness. If an exercycle is prescribed and used as necessary treatment to enable the claimant to work, deduct payments the claimant makes toward its cost.

5. Payments for drugs and medical services

(i) If the claimant must use drugs or medical services (including diagnostic procedures) to control his or her impairment(s), the payments the claimant makes for them may be deducted. The drugs or services must be prescribed (or utilized) to reduce or eliminate symptoms of the claimant's impairment(s) or to slow down its progression. The diagnostic procedures must be performed to ascertain how the impairment(s) is progressing or to determine what type of treatment should be provided for the impairment(s).

(ii) Examples of deductible drugs and medical services are:

- anticonvulsant drugs to control epilepsy or anticonvulsant blood level monitoring;
- antidepressant medication for mental impairments;
- medication used to allay the side effects of certain treatments;
- radiation treatment or chemotherapy for cancer patients;
- corrective surgery for spinal impairments;

- electroencephalograms and brain scans related to a disabling epileptic impairment;

- tests to determine the efficacy of medication on a diabetic condition; and

- immunosuppressive medications that kidney transplant patients regularly take to protect against graft rejection.

(iii) Deduct only the costs of drugs or services that are directly related to the claimant's impairment(s). Examples of non-deductible items are routine annual physical examinations, optician services (unrelated to a disabling visual impairment) and dental examinations.

6. Payments for similar items and services

(i) General - If the claimant is required to utilize items and services not specified in paragraphs (C)(1) through (5) of this section, but which are directly related to his or her impairment(s) and which the claimant needs to work, their costs are deductible. Examples of such items and services are medical supplies and services not discussed above, the purchase and maintenance of a guide dog that the claimant needs to work, and transportation.

(ii) Medical supplies and services not described above - Deduct payments the claimant makes for expendable medical supplies, such as incontinence pads, catheters, bandages, elastic stockings, face masks, irrigating kits, and disposable sheets and bags. Also deduct payments the claimant makes for physical therapy which the annuitant requires because of his or her impairment(s) and which the claimant needs in order to work.

(iii) Payments for transportation costs - Deduct transportation costs in these situations:

(a) The claimant's impairment(s) requires that in order to get to work the claimant needs a vehicle that has structural or operational modifications. The modifications must be critical to the claimant's impairment(s). Deduct the cost of the modifications, but not the cost of the vehicle. Also deduct a mileage allowance for the trip to and from work. The allowance will be based on data compiled by the

Federal Highway Administration relating to vehicle operating costs. (See Appendix G).

(b) The claimant's impairment(s) requires the claimant to use driver assistance, taxicabs or other hired vehicles in order to work. Deduct amounts paid to the driver and, if the claimant's own vehicle is used, also deduct a mileage allowance for the trip to and from work.

(c) The claimant's impairment(s) prevents the claimant from taking available public transportation to and from work and the claimant must drive his or her (unmodified) vehicle to work. If DPS can verify through the claimant's physician or other sources that the need to drive is caused by the claimant's impairment(s) (and not due to the unavailability of public transportation), deduct a mileage allowance for the trip to and from work.

7. Payments for installing, maintaining, and repairing deductible items - If the device, equipment, appliance, etc., that the claimant utilizes qualifies as a deductible item as described in paragraphs (C)(2), (3), (4) and (6) of this section, the costs directly related to installing, maintaining and repairing these items are also deductible. (The costs that are associated with modifications to a vehicle are deductible. Except for a mileage allowance, the costs that are associated with the vehicle itself are not deductible.)

D. When expenses may be deducted

1. Effective date - To be deductible, an expense must be incurred after November 30, 1980. An expense may be considered incurred after that date if is paid thereafter even though pursuant to a contract or other arrangement entered into before December 1, 1980.

2. Payments for services - A payment the claimant makes for services may be deducted if the services are received while the claimant is working and the payment is made in a month the claimant is working.

3. Payments for items - A payment the claimant makes toward the cost of a deductible item (regardless of when it is acquired) may be deducted if payment is made in a month the claimant is working. See paragraph (E)(4) of this section when purchases are made in anticipation of work.

E. How expenses are allocated

1. Recurring expenses - The claimant may pay for services on a regular periodic basis, or the claimant may purchase an item on credit and pay for it in regular periodic installments or the claimant may rent an item. If so, each payment the claimant makes for the services and each payment the claimant makes toward the purchase or rental (including interest) is deductible in the month it is made.

   EXAMPLE: B starts work in October 1981, at which time they purchase: a medical device at a cost of $4,800 plus interest charges of $720. Their monthly payments begin in October. They earn and receive $400 a month. The term of the installment contract is 48 months. No down payment is made. The monthly allowable deduction for the item would be $115 ($5.20 divided by 48) for each month of work during the 48 months.

2. Non-recurring expenses - Part or all of the claimant expenses may not be recurring. For example, the claimant may make a one-time payment in full for an item or service or make a down payment. If the claimant is working when they make the payment, either deduct the entire amount in the month the claimant pays it or allocate the amount over a 12 consecutive month period beginning with the month of payment, whichever the claimant selects.

   EXAMPLE: A begins working in October 1981 and earns $525 a month. In the same month, he purchases and pays for a deductible item at a cost of $250. In this situation, allow a $250 deduction for October 1981, reducing A's earnings below the substantial gainful activity level for that month.

   If A's earnings had been $15 above the substantial gainful activity earnings amount, A probably would select the option of projecting the $250 payment over the 12-month period, October 1981 - September 1982, giving A an allowable deduction of $20.83 a month for each month of work during that period. This deduction would reduce A's earnings below the substantial gainful activity level for 12 months.

3. Allocating down payments - If the claimant makes a down payment, make a separate calculation for the down payment in order to provide for uniform monthly deductions, if the claimant chooses. In this situation, determine the total payment that the claimant will make over a 12 consecutive month period beginning with the month of the down payment and allocate that amount over the 12 months. Beginning with the 13th month, the regular monthly payment will be

deductible. This allocation process will be for a shorter period if the claimant's regular monthly payments will extend over a period of less than 12 months.

EXAMPLE 1: C starts working in October 1981, at which time he purchases special equipment at a cost of $4,800, paying $1,200 down. The balance of $3,600, plus interest of $540, is to be repaid in 36 installments of $115 a month beginning November 1981. C earns $500 a month. He chooses to have the down payment allocated. In this situation, allow a deduction of $205.42 a month for each month of work during the period October 1981 through September 1982. After September 1982, the deduction amount would be the regular monthly payment of $115 for each month of work during the remaining installment period.

Explanation:

Down payment in October 1981. . . . . .$1,200

Monthly payments:

November 1981 through September 1982.. $1,265

12/ $2,465 = $205.42

EXAMPLE 2: D, while working, buys a deductible item in July 1981, paying $1,450 down. However, his first monthly payment of $125 is not due until September 1981. D chooses to have the down payment allocated. In this situation, allow a deduction of $225 a month for each month of work during the period July 1981 through June 1982. After June 1982, the deduction amount would be the regular monthly payment of $125 for each month of work.

Explanation:

Down payment in July 1981. . . . . .$1,450

Monthly payments:

September 1981 through June 1982. . . . $1,250

12/$2,700 = $225

4. Payments made in anticipation of work - A payment made toward the cost of a deductible item that the claimant made in any of the 11 months preceding the month they started working will be taken into account in determining the claimant's impairment-related work expenses. When an item is paid for in full during the 11 month

preceding the month the claimant started working, the payment will be allocated over the 12 consecutive month period beginning with the month of the payment. However, the only portion of the payment which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for with a one-time payment of $600, the deductible amount would be $450 ($600 divided by 12, multiplied by 9).

Installment payments (including a down payment) that the claimant made for a particular item during the 11 months preceding the month they started working, will be totaled and considered to have been made in the month of the annuitant's first payment for that item within this 11 month period. The sum of these payments will be allocated over the 12 consecutive month period beginning with the month of the claimant's first payment (but never earlier than 11 months before the month work began). However, the only portion of the total which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased three months before the month work and it is being paid for in three monthly installments of $200 each, the total payment of $600 will be considered to have been made in the month of the first payment, that is, three months before the month work began. The deductible amount would be $450 ($600 divided by 12, multiplied by 9).

The amount, as determined by these formulas is to be considered to have been paid in the first month of work. Deduct either this entire amount in the first month of work or allocate it over a 12 consecutive month period, beginning with the first month of work, whichever the claimant selects. In the above example, the claimant would have the choice of having the entire $450 deducted in the first month of work or having $37.50 a month ($450 divided by 12) deducted for each month that they work over a 12 consecutive month period, beginning with the first month of work. To be deductible, the payment must be for durable items such as medical devices, prostheses, work-related equipment, residential modifications, non-medical appliances and vehicle modifications. Payments for services and expendable items such as drugs, oxygen, diagnostic procedures, medical supplies and vehicle operating costs are not deductible for the purpose of this paragraph.

F. Limits on deductions

1. Deduct the actual amounts the claimant pays towards his or her impairment-related work expenses unless the amounts are

unreasonable. Consider the amount the claimant pays to be reasonable if it does not exceed the standard or normal charge for the same or similar item or service in the claimant's community.

2. Impairment-related work expenses are not deducted in computing the claimant's earnings for purposes of determining whether the claimant's work was "services" as described in 10.5.4 - The Trial Work Period.

3. The decision as to whether the claimant performed substantial gainful activity in a case involving impairment-related work expenses for items or services necessary for the claimant to work will be based generally upon the claimant's "earnings" and not on the value of "services" the claimant rendered. This is not necessarily so, however, when the claimant is in a position to control or manipulate his or her earnings, i.e., a self-employed individual.

4. No deduction will be allowed to the extent that any other source has paid or will pay for an item or service. No deduction will be allowed to the extent than the claimant has been, could be, or will be reimbursed for payments they made. (See paragraph (B)(3) of this section.)

G. Verification - Verify the claimant's need for items or services for which deductions are claimed, and the amount of the charges for those items or services. The claimant will also be asked to provide proof that they paid for the items or services.

10.5 Work Incentives

10.5.1 Return To Work Less Than One Year From Disability Onset

When a beneficiary returns to work less than one year after onset, the issue is raised as to whether the 12-month duration requirement for disability is met. To determine the correct action to be taken, the examiner must know:

- Whether the work was SGA (or regular railroad occupation or had similar duties), and whether the return to work occurred on, before, or after the date of the final determination. The date of the final determination is the date that the determination notice is received by the annuitant. The date of the receipt of notice is presumed to be the fifth day following the date of the mailing of the determination notice. For purposes of disability determination and onset date, the “determination notice” is the RL-121f. (All RL-121f letters must contain the onset date and reconsideration paragraph.)

- In cases where the return to work occurred on or before the final determination, whether the notice of the work was received on, before, or after the date the final disability determination was made, and

- In cases where the return to work occurred after the final determination, whether the work began during or after the five-month waiting period.

NOTE: Any time a notice is received that a disability annuitant has returned to railroad service or an employee disability annuitant has returned to any work for more than the current monthly disability earnings limit, the annuity must immediately be suspended. Refer to the chart in FOM 1125.5.2 for the monthly and annual earnings limits.

10.5.1.1 Return to Work Occurred On or Prior to Date of Final Determination

Determine whether the work information was **received** on, before, or after the date of final determination.

A. Information Received Before the Final Determination

If the claimant returned to work within 12 months of the disability onset and prior to the final determination date, and the return to work information is received before the final determination, there are two possible actions:

1. Deny the disability based on not meeting the duration requirement if the claimant returns to SGA (or to regular railroad or similar occupation for employee occupational disabilities) and the work continues.

   EXAMPLE: The claimant alleges an onset date of 5/1/2005. No decision has yet been made when DBD receives a notice that the claimant has returned to work in SGA on 12/31/2005 and continues to work. Deny the claim.

2. Grant the disability if it is determined that:

   - The work activity was not SGA (or regular railroad or similar occupation for employee occupational disabilities), or

     EXAMPLE: The claimant alleges an onset date of 5/1/2005. No decision has yet been made when DBD receives a notice that the claimant has returned to non-railroad work on 12/31/2005 and continues to work. The work is not SGA and is not similar to railroad duties. The work will not affect the decision.

   - If the work was SGA (or regular railroad or similar occupation for employee occupational disabilities) but was later stopped.

Consider granting with possible later onset date than the claimed onset date or applying an unsuccessful work attempt (UWA). (See DCM 10.5.3 for UWA criteria.)

EXAMPLE: The claimant alleges an onset date of 5/1/2005. No decision has yet been made when DBD receives a notice that the claimant has returned to non-railroad work on 12/31/2005. The work stopped on 2/5/2006. Consider UWA.

B. Information Received After the Final Determination Date

If the claimant returned to work within 12 months of the disability onset and prior to or on the final determination date, but the return to work information is received after the final determination date, there are three possible actions:

1. Re-open and deny the disability based on not meeting the duration requirement if the claimant returns to SGA (or to regular railroad or similar occupation for employee occupational disabilities) and the work continues, and it has been at least six months since the claimant returned to work. Check payment status to determine whether the case needs to be dumped from RASI or payments terminated.

   EXAMPLE: The final decision date is 3/1/2006 to grant disability with an onset date 2/4/2005. On 3/15/2006, DBD receives a notice that the claimant returned to work in SGA on 8/13/2005 and the work continues. Re-open and deny claim.

   If it has been less than six months since the claimant returned to work, set a call-up for six months after the return to work date. Check payment status to determine whether the case needs to be dumped from RASI or payments suspended. When the call-up expires, determine whether claimant has stopped working. If yes, go to 3. If no, re-open and deny based on not meeting the duration requirement.

   EXAMPLE: The final decision date is 3/1/2006 to grant disability with an onset date of 2/4/2005. On 3/15/2006, DBD receives a notice that the claimant returned to work in SGA on 12/1/2005. Suspend payments and set call-up for 6/1/2006. If the claimant has stopped work, consider UWA. If the work continues, re-open and deny claim; or,

2. Uphold the original grant decision if the work activity was not SGA (or similar to regular railroad occupation for employee occupational disabilities).

EXAMPLE: The final decision date is 3/12/2006 to grant disability with an onset date of 2/4/2005. On 3/15/2006 DBD receives a notice that the claimant returned to non-railroad work on 1/13/2006. The work is not SGA. Uphold grant; or.

3. If the work activity was SGA (or regular railroad or similar occupation for employee occupational disabilities) but was later stopped, consider applying an unsuccessful work attempt (UWA). (See DCM 10.5.3 for UWA criteria) or consider re-opening to revise to a later onset than the claimed onset date..

   EXAMPLE: The final decision date is 3/1/2006 to grant disability with an onset date of 2/4/2005. On 3/15/2006, DBD receives a notice that the claimant returned to work in SGA on 12/13/2005. The work stopped on 2/3/2006. Consider UWA.

C. Information Received On the Final Determination Date

If the claimant returned to work within 12 months of the disability onset and prior to or on the final determination date, but the return to work information is received on the final determination date,

1. Re-open and deny the disability based on not meeting the duration requirement if the claimant returns to SGA (or to regular railroad or similar occupation for employee occupational disabilities) and the work continues, and it has been at least six months since the claimant returned to work. Check payment status to determine whether the case needs to be dumped from RASI or payments terminated.

   EXAMPLE: The final decision date is 3/1/2006 to grant disability with an onset date 2/4/2005. On 3/1/2006, DBD receives a notice that the claimant returned to work in SGA on 7/13/2005 and the work continues. Re-open and deny claim.

   If it has been less than six months since the claimant returned to work, set a call-up for six months after the return to work date. Check payment status to determine whether the case needs to be dumped from RASI or payments suspended. When the call-up expires, determine whether claimant has stopped working. If yes, go to 3. If no, re-open and deny based on not meeting the duration requirement.

   EXAMPLE: The final decision date is 6/20/2006 to grant disability with an onset date of 8/8/2005. On 6/20/2006, DBD receives a notice that the claimant returned to work in SGA on 6/19/2006. Suspend payments and set call-up for 1/1/2007. If the claimant has

stopped work, consider UWA. If the work continues, re-open and deny claim; or,

2. Uphold the original grant decision if the work activity was not SGA (or similar to regular railroad occupation for employee occupational disabilities).

   EXAMPLE: The final decision date is 6/20/2006 to grant disability with an onset date of 8/8/2005. On 6/20/2006, DBD receives a notice that the claimant returned to non-railroad work on 3/20/2006. The work is not SGA. Uphold grant; or.

3. If the work activity was SGA (or regular railroad or similar occupation for employee occupational disabilities) but was later stopped, consider applying an unsuccessful work attempt (UWA). (See DCM 10.5.3 for UWA criteria) or consider re-opening to revise to a later onset than the claimed onset date.

   EXAMPLE: The final decision date is 6/20/2006 to grant disability with an onset date of 8/5/2005. On 6/20/2006, DBD receives a notice that the claimant returned to work in SGA on 3/1/2006. The work stopped on 5/31/2006. Consider UWA or revision to later onset date.

10.5.1.2 Return to Work Occurred After Date of Final Determination

If the return to work occurred after the date of final determination, determine whether the return to work **occurred** during or after the waiting period.

A. Return to Work Occurred During the Waiting Period

When a claimant returns to work at the SGA level (or to regular railroad or similar occupation for employee occupational disabilities) during the waiting period and after the final determination, the action to be taken depends upon whether this work continues or has stopped.

1. If this work continues, the determination of allowance on the claim must be re-opened and revised to a denial.

   EXAMPLE: The final decision date is 2/15/2005 to grant disability with onset date of 12/1/2004. On 3/2/2006, DBD receives notice that the claimant returned to work in SGA on 3/2/2005, and the work continues. Re-open and deny claim.

2. When a claimant returns to work during the waiting period but this work later stops, the claim must be reviewed to determine whether a UWA can be established. A UWA during the waiting period will

not preclude a finding of disability. (See DCM 10.5.3 for UWA criteria.)

EXAMPLE: The final decision date is 2/15/2005 to grant disability with onset date of 12/1/2004. On 3/2/ 2006, DBD receives notice that the claimant returned to work in SGA on 3/2/2005, but the work stopped on 5/30/2005. Consider UWA.

3. When a claimant returns to work at the SGA level during the waiting period and later stops this work and the criterion for a UWA are not met, determine whether a later disability onset date can be granted

EXAMPLE: The final decision date is 2/15/2005 to grant disability with onset date of 12/1/2004. On 3/2/2006, DBD receives notice that the claimant returned to work in SGA on 3/2/2005. The work stopped on 2/5/2006. Consider a later onset date.

B. Return to Work Occurred After the Waiting Period

In cases where the return to work occurred after the date of the final determination and after the waiting period, the appropriate action will depend on whether an MIE diary is indicated. (See DCM 8.5.3 for diary criteria.)

1. Medical Improvement Expected (MIE) Diary Established - If the claimant returns to SGA (or to regular railroad or similar occupation for employee occupational disabilities) after the waiting period and after the date of the final determination, and an MIE diary has been established or would be set based on the diary call-up criteria, develop for possible medical recovery. While this claimant gets a TWP, if it is determined that medical recovery has occurred, terminate the D/A irrespective of any remaining TWP months.

EXAMPLE: The final decision date is 2/15/2005 to grant disability with onset date of 12/1/2004. On 3/2/2006, DBD receives notice that the claimant returned to work in SGA on 8/2/2005. A MIE diary was set.

2. No MIE Diary Established - If the claimant returns to SGA (or to regular railroad or similar occupation for employee occupational disabilities) after the waiting period, and after the date of the final determination, and no MIE diary has been established or would be set based on the diary call-up criteria, apply the TWP provisions.

EXAMPLE: The final decision date is 2/15/2005 to grant disability with onset date of 12/1/2004. On 3/2/2006, DBD receives notice that the claimant returned to work in SGA on 8/2/2005. A MIP diary was set. Apply TWP provisions.

10.5.1.3 Actions to Be Taken When a Case is Re-opened for Denial

When a decision is made to re-open a disability rating to deny, take the following actions:

A. The Disability Initial Section (DIS) examiner shall:

1. Write rationale for decision. Use RRAILS G325B, *Disability Briefing Document*. Indicate on the new rationale that it "supersedes" prior decision dated MM/DD/CCYY (insert date of prior decision). Submit rationale to DIS auth folder for review.

2. Enter the decision onto OLDDS G-325. Use code 2 in Items 22a and 28. Notate in OLDDS remarks "reopen to deny because XXXXXX; supersedes OLDDS dated MM/DD/CCYY". Replace the XXXXXX with your explanation of why the case was reopened.and cite date of previous OLDDS entry being superseded.

3. Compose a disability custom denial letter. Indicate that the letter "supersedes" prior disability notice dated MM/DD/CCYY (insert date of prior notice). Submit the denial letter to DIS auth folder for review.

4. Leave DDIREO USTAR code at PE. Send email to Disability Post Section (DPS) mailbox (DPS-DisabilityPostSectionGroupMailbox@rrb.gov) to indicate that the DIS case is ready for review. The email should contain the claimant's name and RRA claim number. Indicate in the email which Post reviewer originally handled the case that is being submitted for reopening (DIS supervisor should advise if original reviewer is no longer in the Disability Benefits Division (DBD)).

B. The DPS reviewer shall:

1. Authorize the case on OLDDS.

2. Submit the denial letter to be printed/imaged.

3. Submit image of the rationale to WorkDesk.

4. Enter FAST termination code 08 (employee) or code 42 (survivors). Use annuity beginning date (ABD)/onset beginning date (OBD) as the effective date for termination.

5. Make sure that PREH/DATAQ updates the following day with the termination code.

6. Once PREH has updated, send an email notice to both DIS Leads advising case was reopened to deny. Provide case details, which explain the prior ABD/OBD and why the case action was reopened.

C. The DIS Lead Examiner shall:

1. Create Retirement Survivor Benefit Division (RSBD) USTAR code as needed.

   a. RBDDER = DIB reopen to deny/overpayment.

   b. SBDDER = DIB reopen to deny/overpayment.

2. Email RSBD group mailbox to advise them of the reopening action and indicate that an USTAR code was created for RSBD review/handling. Cut and paste the sent email into the RBDDER/SBDDER USTAR referral under "general remarks".

3. Email P&S-RAC mailbox (RAC-Return to Work (Disability Denial)) to advise the PREH analyst that the information in PREH must be corrected because the annuity and disability freeze (if applicable) information was changed from an allowance to a denial based on additional information received. The email should include "reopen to deny" in the subject line and should include the claimant's name, RRA claim number, and type of benefit being adjusted. Image a copy of the sent email to WorkDesk.

4. Email the Sickness, Unemployment Benefit Division's (SUBD) group mailbox to advise them that there is no disability annuity entitlement due to case being reopened and denied. See RCM 5.9.4, *Notifying SUBD of Suspension or Termination of Annuity*. The email should include "reopen to deny" in the subject line and should include the claimant's name, RRA claim number, and types of benefits being adjusted. Image a copy of the sent email to WorkDesk.

   NOTE: One email can be written and sent to P&S-RAC and SUBD, as long as details for each office are included.

10.5.1.4 Actions to Be Taken When a Case is Re-opened to Set a Later Onset Date

If the decision is revised to a later onset, take the following actions:

A. The Disability Initial Section (DIS) examiner shall:

1. Write rationale for decision. Use RRAILS G325B, *Disability Briefing Document*. Submit rationale to DIS auth folder for review.

2. Enter the new decision onto OLDDS G-325. Use code 2 in Items 22. If disability freeze onset is also being revised, enter code 2 in Item 28. Add comments to OLDDS Remarks: "Case reopen to change onset from MM/DD/CCYY to MM/DD/CCYY. Annuity beginning (ABD) date needs to be adjusted".

3. Compose a custom disability letter to advise the annuitant of the change in onset/ABD. Submit letter to DIS auth folder for review.

4. Leave DDIREO USTAR code at PE. Send an email to the Disability Post Section (DPS) group mailbox (DPS-DisabilityPostSectionGroupMailbox@rrb.gov) to indicate that the DIS case is ready for review. The email should contain the annuitant's name and RRA claim number. Indicate in the email which Post reviewer originally handled the case that is being submitted for reopening (DIS supervisor should advise if original reviewer is no longer in the Disability Benefits Division (DBD)).

B. The DPS reviewer shall:

1. Authorize the DIS case on OLDDS.

2. Submit the letter to be printed/imaged.

3. Submit image of the rationale to WorkDesk.

4. Check PREH the next business day to make sure the onset date change has updated on PREH Screen 3255.

5. After PREH has updated, send an email to both DIS Leads to have them notify RSBD regarding the reopening, change in onset/ABD and possible overpayment.

C. The DIS Lead Examiner shall:

1. Create RSBD USTAR code as needed.

   a. RBDABD = Change in onset/ABD.

   b. SBDABD = Change in onset/ABD.

2. Email RSBD group mailbox to advise them of the reopening action and indicate that an USTAR code was created for RSBD review/handling. Cut and paste the sent email into the RBDABD/SBDABD USTAR referral under "general remarks".

10.5.2 Return to Work More Than One Year After Disability Onset Date

The appropriate action will depend on whether the return to work occurred before or after the date of the final determination.

10.5.2.1 Return to Work Prior to Date of Final Determination

In these cases, the appropriate action will depend on whether an MIE diary is indicated. (See DCM 8.5.3 for diary criteria.)

1. MIE Diary Scheduled - If the case is diaried for an MIE review, or an MIE diary would be set based on the call-up criteria, develop for and make an SGA (or regular railroad or similar occupation for employee occupational disabilities) determination.

2. No MIE Diary Schedule - If the case is not diaried for an MIE review, or a MIP or MINE diary would be set based on the call-up criteria, and the TWP is not excluded, a trial work diary must be established. Handle the case following regular TWP provisions.

For more information on how to handle Occupational and Total and Permanent cases when the return to work is more than one year after the disability onset date (meets 12 month duration) and prior to final determination click here:

DBD Initial and Post Examiner Action When 12 month Duration is met

10.5.2.2 Return to Work After Date of Final Determination

If the final determination has been made, the issue involved is strictly one of continuing disability. Handle the case under medical recovery or SGA procedures.

10.5.3 Unsuccessful Work Attempts

A. Definition of Unsuccessful Work Attempt - An "Unsuccessful work attempt" is an effort to do substantial work in employment or self-employment. However, the work is then discontinued after a short time (no more than 6 months) due to the worsening of an impairment, a new impairment, or the removal of special conditions related to the impairment that allowed the performance of work.

B. Beginning and Ending Dates - There must be a significant break in the continuity of an individual's regular employment before we can consider the work to be unsuccessful. Such a break in continuity would occur because of the impairment or the removal of conditions essential to further performance of the work. The individual must be out of work for 30 consecutive days, or forced to change to another type of work or change to a different employer.

After the initial "significant break in continuity," the subsequent period of work should be considered continuous until a similar change occurs, i.e., there is an absence from work of 30 days or a change to another type of work or employer, which is caused by the impairment or the removal of conditions essential to further performance of the work. Each continuous period, separated by significant breaks in continuity, may constitute an "unsuccessful work attempt." This is true if the criteria related to duration and conditions of work, described in C below, are met. However, as indicated in C below, seasonal and other types of patterned, recurring work should not be considered as a series of unsuccessful work attempts.

C. Unsuccessful Work Attempt Distinguished from Seasonal and Other Patterned, Recurring Work - Seasonal and other types of patterned, recurring work should not be determined as a series of "unsuccessful work attempts," because the termination of each period of work is unrelated to the impairment. Seasonal work does not mean that the individual is unable to repeat the work.

The nature and amount of work performed in seasonal and other types of patterned, recurring work may indicate that the individual has the ability to perform SSA substantial gainful activity, even if they are not actually performing SGA. Disability examiners will resolve issues of this type by taking into account all vocational and medical factors relevant to a decision of ability to engage in SGA.

D. Criteria - Duration and Conditions of Work - The following requirements must be met in order for a period of work to be considered an unsuccessful work attempt:

1. Claimant Worked 6 Months or Less - The work must have terminated within 6 months due to impairment or the removal of special conditions that allowed performance of work; or

2. Claimant Worked More Than 6 Months – An unsuccessful work attempt does not apply.

E. Performance of Work Under Special Conditions – Work may be performed at SGA because of special conditions.

Examples include:

1. Required and received special assistance from other employees in performing the job; or

2. Was allowed to work irregular hours or take frequent rest periods; or

3. Was provided with special equipment or was assigned work especially suited to the impairment; or

4. Was able to work only with a framework of especially arranged circumstances, such as where other persons helped them prepare for or get to and from work; or

5. Was permitted to perform at a lower standard of productivity or efficiency than other employees; or

6. Was granted the opportunity to work, despite their handicap, because of family relationship, past association with the firm, or other altruistic reason.

Removal of such special conditions can reduce work to less than SGA and suggest an UWA. Specifically, “the removal of special conditions related to the impairment that are essential to the further performance of work” suggest an UWA.

NOTE: The work under special circumstances may cease because of the impairment. The impairment may cause worsening of symptoms, changes in complaints, or medical evidence supports impairment changes. For example, evidence of hospitalization for alleged or documented impairment may cause work to cease or reduce to less than SGA.

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10.5.4 The Trial Work Period

A. Definition - The trial work period is a period during which the annuitant may test his or her ability to work and still be considered occupationally disabled or disabled for any regular employment. The trial work period begins and ends as described in paragraphs F. and G. of this section. During this period, the annuitant may perform "services" (see paragraph B. of this section) in as many as nine months, but these months do not have to be consecutive. DPS will not consider those services as showing that the annuitant's disability has ended until the annuitant has performed services in at least nine months. However, after the trial work period has ended, DPS will consider the work the annuitant did during the trial work period in determining whether the annuitant's disability has ended at any time after the trial work period. Effective January 1992, the trial work period is complete only when the disabled annuitant completes 9 service months on or after January 1992 and within 60 consecutive months (see DCM 10.5.5).

B. "Services"

1. Services for an occupational disability - When used in occupational disability situations, "services" means any activity which, even though it may not be substantial gainful activity as defined in DCM 10.4, is

   (i) Done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit; and

   (ii) The activity is a return to the same duties of the annuitant's regular railroad occupation or the activity so closely approximates the duties of the regular railroad occupation as to demonstrate the ability to perform those duties.

2. Service for annuitants disabled for any regular employment - When used in total and permanent disability situations, "services" means any activity, even though it is not substantial gainful activity, which is done by the annuitant in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If the annuitant is employed, DPS will consider his or her work to be "services" if in any calendar year the annuitant earns more than the allowable amount. Click here for monthly earnings threshold chart for Trial Work Period: Monthly Earnings Threshold for Trial Work Period.

3. Services in Self-Employment - If the annuitant is self-employed, DPS will consider his or her activities "services" if the annuitant's net earnings are based on the monthly earnings threshold for trial work period or the annuitant works more than 80 hours a month in the business (40 hours a month is the figure for any calendar year before 2001 and 15 hours a month is the figure for calendar years before 1990). Do not consider work to be "services" when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house or in self-care. Click here for earnings threshold for trial work period: Monthly Earnings Threshold for Trial Work Period.

   NOTE: Activity performed by an annuitant for which payment in excess of the monthly earnings threshold for trial work period does not constitute "services" if the activity, although resembling services in employment for remuneration or gain, is:

   (i) part of a prescribed program of medical therapy; and

   (ii) carried out in a hospital under the supervision of medical and administrative staff; and

   (iii) not performed in an employer/employee relationship; and

   (iv) not normally performed for remuneration or gain.

4. Impact of Impairment Related Work Expenses (IRWE's) and Vocational Rehabilitation Programs on the Assessment of Trial Work Service Months

   (i) Impairment Related Work Expenses- The IRWE deduction for items or services necessary for work does not apply for the purpose of determining whether a month of service is chargeable for TWP. In other words, deductions will not be made to determine whether a person's monthly earnings can be reduced based on the monthly earnings threshold for trial work period. Click here for earnings threshold for trial work period chart: Monthly Earnings Threshold for Trial Work Period.

   (ii) Vocational Rehabilitation Programs - The earnings derived from work in a vocational rehabilitation program is chargeable for TWP purposes.

C. Limitations on the number of trial work periods - An employee may have only one trial work period during each period in which they are occupationally disabled or disabled for any regular employment.

D. Entitlement to a Trial Work Period

1. Generally, the annuitant is entitled to a trial work period if they are entitled to an annuity based on disability.

2. Prior to January 1992, an annuitant is not entitled to a trial work period if they are in a second period of disability for which they did not have to complete a waiting period before qualifying for a disability annuity. The annuitant is entitled to a TWP in a second period of entitlement for which no waiting period was served if entitlement exists as of January 1992 or later (see DCM 10.5.5D).

   NOTE: There are cases, however, where a person becomes re-entitled to DIB within 5 years after a prior termination but is not paid for the full number of months of disability. This can occur where the subsequent application is not filed until 17 or more months after the onset of the subsequent disability; since benefits can be paid retroactively for only 12 months, a beneficiary in this situation will have a period of 5 or more months after onset in which benefits are not payable. This period of 5 or more nonpayment months constitutes a "deemed" waiting period, thus, the TWP provisions would apply.

3. A disabled child annuitant whose disability has been suspended because of SGA following completion of a trial work period, and who subsequently becomes re-entitled to a disabled child's annuity (DCIA) based on a disability which began before age 22, or within 84 months following the month in which the most recent entitlement to a DCIA terminated is again entitled to a trial work period.

E. Payment of the Disability Annuity During the Trial Work Period

1. The disability annuity of an employee, child, or widow(er) will not be paid for any month in the trial work period in which the annuitant works for an employer covered by the Railroad Retirement Act.

2. The disability annuity of an employee will not be paid for any month in this period in which the employee annuitant earns more than the monthly disability earnings limit. Click here for monthly disability earnings limit chart: Disability Earnings Periods.

All amounts are after deduction of disability related work expenses in employment or self-employment.

3. If a disability annuity for an employee, child, or widow(er) is suspended because of work during the trial work period, and the disability annuitant discontinues that work before the end of the trial work period, the disability annuity may be reinstated again without a new application and a new determination of disability.

F. When the trial work period begins and how trial work months are counted

1. When the TWP begins - The trial work period begins with whichever of the following calendar months is the later -

   (i) The annuity beginning date; or

   (ii) The month the application for disability is filed.

1a. In the case of a disabled child annuitant, who has attained age 18, the entitlement to a trial work period begins with the later of the month in which age 18 is attained or the month entitlement to a disabled child annuity is attained.

1b. A person entitled to a disabled widow(er) annuity is not entitled to a trial work period prior to December 1980.

2. When to begin counting TWP service months - The months of trial work will be counted beginning with the first month within the TWP in which the annuitant, who has not recovered medically, performs services as defined in DCM 10.5.3B.

EXAMPLE 1: An annuitant becomes entitled to a disability annuity effective November 1984, based on an application filed in November 1984 and begins work in March 1988. The entitlement to a TWP begins in November 1984, and the counting of trial work months begins in March 1988.

EXAMPLE 2: An annuitant becomes entitled to a disability annuity effective January 1985 based on an application filed in January 1985. An onset date of July 15, 1984, was established. After the award, it was discovered that they returned to work for one month in December 1984 (during the waiting period). However, the work during the waiting period was determined not to be SGA. The TWP and the counting of months of trial work begin in January 1985.

EXAMPLE 3: An annuitant becomes entitled to a disability annuity effective July 1983 based on an application filed in July 1984. The annuitant started work in April 1984 earning only $80 per month

(non-SGA) and continued this work through July 1985. Since TWP service months cannot begin prior to date of application, the TWP began July 1984 and ended March 1985.

3. Counting TWP Service Months - It is very important to determine how many months in the TWP are service months since the case processing in work activity cases is dependent upon distinguishing between those situation where 9 service months have been completed, thus ending the TWP, and those situations where 9 service months have not been completed.

   Non-discrepant earnings from any reliable source, are sufficient for TWP purposes. However, such information cannot be used as the sole basis for determining if a person engaged in SGA. A continuing disability review should be done at the end of the TWP to verify if medical recovery has occurred.

   Counting the number of service months in a TWP is not very complicated when only one period of work activity is involved. However, since the 9 service months need not be consecutive, work in several periods over several years may have to be considered. Thus, it may be necessary to combine the findings from a current review with the findings of previous reviews to arrive at the total service months expired in the TWP. The claim folder should always contain evidence as well as a G-325a, OLDDS printout documenting a monthly breakdown so that the 9 service months can be properly established as composing the TWP. Effective January 1992, the TWP is complete only when the annuitant completes 9 service months on or after January 1992 and within 60 consecutive months (see DCM 10.5.4G).

G. When the trial work period ends and how work activity is evaluated

1. When the TWP ends - The trial work period ends with the close of whichever of the following calendar months is the earlier

   (i) The ninth month (whether or not the months have been consecutive) in which the annuitant performed services effective January 1992, the 9 months must be completed within a 60 consecutive month period (see DCM 10.5.4.F); or

   (ii) The month in which new evidence, other than evidence relating to any work the annuitant is not disabled, even though they have not worked a full nine months. DPS may find that the annuitant's disability has ended at any time during the trial work period if the medical or other evidence shows that the annuitant is no longer disabled.

EXAMPLE 1: An annuitant became entitled to disability benefits in July 1984 based on an application filed in July 1984 (no medical improvement expected (MIE) diary was established and medical recovery has not occurred): they began work in January 1985 performed and continued services in all succeeding months. The TWP ended with September 1985.

EXAMPLE 2: An annuitant became entitled in July 1984 based on an application filed in April 1984 (no (MIE) diary was established); he began trial work in June 1985. In September 1985 he submitted a medical report from his attending physician indicating recovery (i.e., affirmative evidence). Based on further medical development, cessation of disability was found in October 1985 based upon medical recovery. The TWP ends with October 1985.

EXAMPLE 3: An annuitant became entitled in July 1984 based on an application filed in September 1984 (MIE diary was established for June 1985); he began work in January 1985. Evidence showed medical recovery in January 1985. Disability ceased and the TWP ended with January 1985 based on a current medical cessation.

EXAMPLE 4: An annuitant became entitled in July 1984 based on an application filed in July 1984. An MIE diary was established for June 1985. They began work in January 1985 and continued working in all succeeding months. Since return to work is an indication of possible medical recovery, DPS conducted a CDR but found that they were still disabled and prepared a continuance determination in March 1985. Counting of the TWP service months began in January 1985, the first month in which they performed services, and ended with September 1985 (assuming performed services in all months).

2. Evaluation of Work Activity - After a TWP has ended, it must be decided whether continuing work activity demonstrates an ability to engage in SGA. If it does, disability ceases. If it does not, and there is no medical issue, disability continues. When work activity continues for at least one month at the SGA level following completion of the TWP, the SGA exception (see DCM 10.3) to medical improvement permits a finding that disability ceased if all the other rules i.e., earnings limitations, subsidies, etc., related to SGA cessations are met. (See DCM 10.4) The individual must actually engage in SGA in the month for which disability is found to have ceased. For example, the 9th TWP month is 12/85 and an SGA decision is made in 01/86. There must be actual performance of SGA in 1/86 before disability can be found to have ceased in 01/86.

If work activity does not continue for at least one month at the SGA level, the SGA exception to medical improvement does not apply, and a DPS medical decision might be needed in order to make a decision that the disability had ceased. Disability ceases when the annuitant demonstrates a continuing ability to engage in SGA. Therefore, the decision must take into consideration whether substantial gainful work is continuing, or, if it has stopped, how long it lasted and the reason it stopped.

If there is no medical issue, the annuitant completes the 9 service months, and the work demonstrates an ability to engage in SGA, cessation should be found effective with the first month of SGA following completion of the TWP. If the beneficiary is not entitled to a TWP, a cessation will be found effective with the first month the annuitant engages in SGA.

10.5.5 The Rolling 60-Month Trial Work Period

A. General - This section contains continuing disability review (CDR) instructions to implement the new rolling 60-month TWP provisions contained in Section 5112 of the Omnibus Budget Reconciliation Act of 1990. Effective January 1992, the Rolling 60-Month TWP provision provides that the TWP is complete only when a disability annuitant completes 9 service months within 60 consecutive months and the TWP provisions apply to subsequent periods of disability for which no waiting period is served. The rolling 60-month trial work period applies to annuitants who are considered occupationally disabled or disabled for any regular employment. Prior to January 1992, an employee or widow(er) disability annuitant was not entitled to a TWP if (s)he was in a 2nd period of entitlement for which (s)he did not have to complete a waiting period (see DCM 10.5.4 D2).

B. The rolling 60-month TWP applies in an initial or subsequent period of disability when:

The disability annuitant completes less than 9 TWP service months as of 1/92 (i.e., 8 or less TWP service months are credited prior to 1/92) and has not medically recovered (i.e., disability has not been found to have ceased due to medical improvement (MI) or due to work activity).

C. The rolling 60-Month TWP does not apply in an initial or subsequent period of disability when:

1) The disability annuitant completes the TWP under the old rules prior to 1/92 (i.e., completes 9 TWP service months prior to 1/92) or

2) The disability is found to have ceased 1/92 or earlier due to MI or work activity.

D. When the rolling 60-month TWP provision applies in a subsequent period of disability - The rolling 60-month TWP provision applies in a subsequent period of disability for which no waiting period was served if entitlement exists as of 1/92 or later. Therefore, the rolling 60-month TWP applies in a subsequent period of disability when the disability annuitant:

1) Returns to work 1/92 or later, or

2) Returned to work prior to 1/92 but the work was not SGA (i.e., disability continued after 12/91).

E. When the rolling 60-Month TWP provisions does not apply in a subsequent period of disability - The rolling 60-Month TWP provision does not apply in a subsequent period of disability for which no waiting period was served when the disability is found to have ceased 1/92 or earlier due to MI or work activity (e.g., SGA).

F. When the rolling 60-Month TWP begins and ends - January 1992 is the earliest 9th service month that can be credited under the rolling 60-month TWP provisions. Thus, 2/87-1/92 is the earliest 60-month period in which the TWP can be completed and 2/87 is the earliest first service month that can be credited under the new TWP provisions. Therefore, the rolling 60-month TWP begins with the later of the month of entitlement or the month of filing, but no earlier than 2/87. Since the rolling 60-month TWP can begin no earlier than 2/87, months of work prior to 2/87 are disregarded. The TWP ends when 9 service months fall with a 60 consecutive month period ending no earlier than 1/92.

G. Counting the rolling 60-Month TWP months - When a disability beneficiary has worked his or her first 9 service months (the 9th service month occurring no earlier than 1/92 - otherwise the TWP was completed under the old rules), count back 60 consecutive months to see if the 9 service months were completed in that 60-month period. If not, the service months that fall before the 60-month period are disregarded, the service months that fall within the 60-month period are counted, and the TWP continues. Each time thereafter that a service month is used, count to determine if 9 service months have been completed. When 9 have been completed, count back 60 consecutive months from the 9th service month to determine whether the 9 months were completed within 60 months. When 9 service months are identified within a 60-month period, the TWP has been completed. Some examples of counting the rolling 60-month TWP months are as follows:

EXAMPLE 1 - In February 2014, a disabled employee annuitant reports that he returned to work in November 2013, continues to work, and earns $770 per month. Review of the file reveals that the annuitant previously worked for two months in 2011. Since the annuitant has less than 9 service months as of January 2014, he is entitled to the rolling 60-month provisions. A TWP diary call-up is established for May 2014 in anticipation of the completion of the 9th TWP service month. If the annuitant works through May 2014, he completes 9 TWP months as of May 2014 (2 months were completed in 2011, 2 months completed in 2013 and 5 months completed in 2014). The TWP ending date would be May 2014. Counting 60 months back from May 2014 reveals that the rolling 60-month TWP begins June 2010. Since the 9 months are completed within the 60 consecutive month period, the TWP is completed.

EXAMPLE 2 - In February 1992, a disabled child reports that he returned to work in August 1991, stopped work in February 1992, and earned $800 per month. Review of the file reveals that he previously work for 2 months in February and March of 1987. Since he completed less than 9 months of trial work under the old TWP provisions as of January 1992, he is entitled to the rolling 60-month TWP provisions. The 9th TWP is completed in February 1992. Counting back 60 months reveals that the beginning date of that 60-month period is March 1987. Counting the service months within the period March 1987 - February 1992, we find that this disabled child only has 8 service months (March 1987 and August 1991 thru February 1992). Therefore in this case, the TWP has not been completed. The service month February 1987 is not counted under the rolling 60-month TWP provisions.

EXAMPLE 3 - In February 1992, a disabled widow report that she started work in July 1991, continues to work and earns $800 per month. Review of the file reveals that the disabled widow previously worked from July 1990 through October 1990 earning $250 per month. Since the disabled widow completed 9 TWP service months prior to January 1992 (July 1990 through October 1990 and July 1991 through November 1991), the rolling 60 month TWP provisions do not apply and the TWP ends November 1991.

EXAMPLE 4 - In February 1992, a disabled employee annuitant reports that he returned to work in September 1991, is continuing to work, and earns $250 per month. A review of the folder reveals that this is a subsequent period of entitlement prior to January 1992. It is determined that the annuitant's most recent work activity beginning in September 1991 is below SGA; therefore, disability continues September 1991 on. Because the annuitant's subsequent period of entitlement continues through January 1992, he is entitled to a TWP under the new provisions. A TWP diary call-up is established for May 1992 in anticipation of the completion of the 9th TWP service month.

EXAMPLE 5 - In March 2015, disabled employee annuitant reports that he returned to work November 2014, continues to work, and earns $780 per month.

A review of the folder reveals that this annuitant is in a subsequent period of entitlement. A counting disability review determines that the disability has ceased due to SGA. Since the work was SGA as of January 2014, or earlier, this annuitant is not entitled to TWP and a disability cessation applies.

10.5.6 The Re-entitlement Period

A. General

1. The re-entitlement period is an addition period after the nine months of trial work during which the annuitant may continue to test his or her ability to work if they have a disabling impairment(s).

1a. Effective 1/92 the re-entitlement period (EPE) begins the month after the 9th service month completed within 60 consecutive months.

2. The disability annuity of an employee, child, or widow(er) will not be paid for -

   (i) Any month, after the third month, in this period in which the annuitant does substantial gainful activity; or

   (ii) Any month in this period in which the annuitant works for an employer covered by the Railroad Retirement Act.

3. The disability annuitant of an employee will not be paid for any month in this period in which the employee annuitant earns more than the current monthly disability earnings limit (refer to the chart in FOM1 1125.5.2 for the monthly and annual earnings limits).

4. If the disability annuity of any annuitant is suspended because of work during the trial work period or re-entitlement period, and the disability annuitant discontinues that work before the end of either period, the disability annuity may be reinstated again without a new application or a new determination of disability.

B. When the re-entitlement period begins and ends - The re-entitlement period begins with the first month following completion of nine months of trial work but cannot begin earlier than December 1, 1980. Effective January 1992, the re-entitlement period (EPE) begins the month after the

9th service month completed within 60 consecutive months. It ends with whichever is earlier:

1. The month before the first month in which the annuitant's impairment(s) no longer exists or is not medically disabling; or

2. The month before the first month of SGA earnings after the 36th month following the TWP.

If the annuitant employee does not perform any SGA after the 36-month period, the extended period of eligibility continues indefinitely and payment continues if all other eligibility factors are met.

NOTE: If an employee is considered not disabled due to SGA after the TWP, benefits are then placed in suspense for the months of earnings over the current monthly disability earnings limit after deduction of disability related work expenses and reinstated for months with earnings less than the current monthly disability earnings limit during the remaining months of the 36-month period.

Reinstatement of payments can occur only within 37 months following the 9th month of the TWP. If the individual's work attempt does not end until after 37 months following the TWP, they would have engaged in SGA in the 37th month and his/her re-entitlement period would have ended.

EXAMPLE: John Smith completes the TWP in December 1987. He was working at an SGA level in December 1987. His re-entitlement period began January 1, 1988 and he continued to perform SGA in each of the first thirty-six consecutive months of the re-entitlement period and each month thereafter. His re-entitlement period ends December 31, 1990 the thirty-sixth month after completion of the TWP.

The old (15 month re-entitlement period) rule still applies if we are processing a retroactive SGA cessation, and:

a. the first month of the extended period of eligibility (EPE is October 1986, or earlier (i.e., the 15th month of the EPE is December 1987, or earlier), and

b. no benefits are payable after December 1987 due to SGA.

10.6 Notices

10.6.1 Content Of Termination Notice

When it has been determined that entitlement to an annuity has ended because of disability cessation, a written notice of the decision to terminate must be released to the annuitant or representative payee within 30 days of the

termination decision. This must allow the annuitant a specified period (always a minimum of 30 calendar days) to respond to our notice before the termination is processed.

Each notice must contain the following:

- The date of cessation of disability.
- A detailed summary of the evidence and rationale upon which the decision is based.
- The effective dates of annuity, freeze and/or Medicare termination.
- If applicable, an explanation that any annuity payments received for months after the effective date of termination are erroneous and must be repaid, unless conditions for waiver are met, and will be the subject of a future notice.
- An opportunity for the annuitant or representative payee to submit evidence within a specified period to support continuance of disability before the decision to terminate becomes final.
- The stipulation that, if the annuitant does not respond in writing within the specified period, that the decision to terminate would become final.
- The right to appeal the decision after it becomes final (do not use AB-25 back).

NOTE: In many cases payments will be in suspense at the cessation effective date, so overpayments usually will not exist. However, in the event that there is an overpayment, the folder will be released to the adjudication unit after termination action has been completed for preparation of an overpayment notice according to current procedure.

10.6.2 Special Situations

A. Death of Annuitant Causes Termination

No written notice is needed with an annuitant's entitlement to an annuity ends because of his death. In addition, a written notice of the decision to terminate a spouse's annuity is not required when the employee dies and SSA has jurisdiction of survivor benefits.

B. Coordination of Joint Freeze Decisions with SSA

Take the following action when coordinating a termination decision with the Social Security Administration.

Joint Freeze Cases - The Board is responsible for development and arriving at a decision. The decision is then sent to SSA for coordination. If SSA indicates they do not wish to handle the case at this time, we will finalize our decision and send SSA a copy of the decision and the evidence on which it was based. Use Form G-26F for transmitting this material.

SSA-415 Case - If a case is called-up for review and the decision was based on SSA's evidence, we must ask SSA if their review has been done and if so, to send a copy of their decision. I f no review as been conducted by SSA, we will develop and make our own decision. Once the decision is finalized, we will send SSA a copy of the decision and the evidence on which it was based.

C. Competing Claimants or Third Party Information Causes Termination

When an individual other than the annuitant or his payee submits information which would cause termination of an annuity, have the field attempt to verify the information from the annuitant or payee directly. If the field is able to verify the information, prepare a termination FAST transaction and G-811 if applicable, to stop the next check and release a letter explaining the termination. That letter should be released within 30 days of the termination decision and must have AB-25 appeals backing. If the field is unable to obtain the information from the annuitant or payee directly, handle the case in the manner described below.

Whenever there are competing claimants or third party informants who submit information which would cause the termination of an annuity, a written notice of the decision to terminate must be sent at least 30 days before the annuity is terminated. This 30 day notice should allow the annuitant or representative payee 30 calendar days to respond to our letter before a FAST transaction is processed.

The advance notice should inform the annuitant or representative payee of:

- The reasons for the annuity termination; AND
- The fact that the annuitant or representative payee has 30 days to submit any evidence or writing which he wants the Board to consider in a review; AND
- The fact that payment of the annuity will either cease or a decision to continue payment shall be made after the Board considers any evidence or writing submitted within the 30 day period and if no evidence is received within this time, the annuity will be terminated as scheduled.

This initial notice should not have AB-25 appeals backing. See 10.6.5 below for action to be taken when any significant evidence or writing is submitted as a result of this notice. See 10.6.4 below for action to be taken when no significant evidence or writing is submitted.

10.6.3 Maintenance Of The Folder After Notice Is Released

The DPS examiner will prepare an advance-dated G-811, if appropriate. This form, together with both copies of G-325a, will be held with the folder in DPS. A call-up will be set to allow any evidence the annuitant may have submitted to match the folder UP TO 15 DAYS after the specified period has ended.

10.6.4 Annuitant Does Not Submit Evidence Within Specified Period

If no written request for review or additional evidence is received at the expiration of the call-up, the DPS examiner will process the FAST transaction and release the G-325a and G-811 as scheduled.

10.6.5 Request For Reconsideration Of A Decision To Terminate

When evidence or writing is submitted to the Board as a response to the notice to terminate, take action as described below:

A. Request for Reconsideration Received Before the Payment Termination Date but Reconsideration Determination not Made by Payment Termination Date

If a request for reconsideration is timely received, but a reconsideration determination has not been made by the payment termination date, the following action should be taken:

Terminate the annuity the day after the payment termination date using FAST termination code 08 or 20. No letter to the annuitant is necessary at this time because the initial cessation letter advised the annuitant that his or her annuity would be terminated if a favorable determination is not made by the payment termination date.

If the reconsideration determination when rendered is favorable, the annuity should be reinstated following the procedure in RCM 8.6 for reinstating an annuity. If the reconsideration is unfavorable, the annuitant should be sent a letter advising of the decision. Appeals code paragraph 189 should be used in the letter.

B. Request for Reconsideration Received After the Payment Termination Date

Payments should be terminated the day after the payment termination date.

If an acceptable request for reconsideration is received after the payment termination date and payments have not been terminated, payments should be terminated pending the reconsideration determination.

If an acceptable request for reconsideration is received after payments have been terminated, do not reinstate payments unless the reconsideration determination, when rendered, is favorable.

If the reconsideration determination is favorable, reinstate the annuity following the procedure for reinstating an annuity. If the reconsideration determination is unfavorable, the annuitant should be sent a letter advising of the decision. Appeals code paragraph 189 should be used in the letter. Also, if the annuity was not timely terminated, take appropriate action regarding the overpayment.

NOTE: The Social Security Disability Benefits Reform Act of 1984 (P.L. 98-460) enacted on October 9, 1984, does provide specified beneficiaries with the option to elect to continue receiving disability benefits and Medicare coverage, if applicable, pending a reconsideration and/or a hearing decision before an Administrative Law Judge (ALJ) on a medical cessation determination. Any continued benefits paid are overpayments subject to recovery if the medical decision is upheld on reconsideration or appeal.

Unlike the Social Security Administration, we cannot allow payments to continue while a reconsideration determination is pending because the Railroad Retirement Act does not have a comparable provision. Payments under the Railroad Retirement Act must be terminated the day after the payment termination date, and subsequently reinstated if the reconsideration determination is favorable.

10.6.6 Notifying DQRRB's Of Termination When TWP, Re-entitlement Period And Extended Medicare Provisions Apply

DPS will prepare an RR and/or SS Act disability termination notice at the time Form G-325a is prepared, recording SS Act disability cessation in the manner outlined in this chapter. When the DQRR's disability ceased because of SGA, DPS will include information in the cessation notice about the TWP, Re-entitlement Period and/or the extended Medicare coverage and its ending date if it is before age 65.

Special language about the reason for adjustment must be included in the adjustment notices when one of these special rules apply. The following are samples of language that could be used to explain these provisions.

A. Inserts for items B, C, D and E

1: the month and year SS Act disability CEASED (item 7b of G-325a)

2: the last month and year of extended Medicare coverage

3: the thirty-sixth month and year of the re-entitlement period

4: the last month and year in the re-entitlement period

5: months after the 3rd month in the re-entitlement period, through the 36th month in the re-entitlement period, in which SGA was performed

6: the first month after the 3rd month in the re-entitlement period but before the 36th month in which SGA ceases to be performed

7: the first month after the 3rd month in the re-entitlement period in which SGA was performed

8: date of notice by DPS that SS Act disability ceased

B. Sample Language for Use by DPS in SS Act Cessation Notices to DQRRB's Not Entitled to a Re-entitlement Period

"Your disability Medicare coverage will continue for up to 24 months after 1 _____ unless your condition improves. This means that your coverage will end after 2 _____. You will be billed every 3 months for your medical insurance premiums; please pay them promptly to avoid duplicate billing or loss of coverage for failure to pay on time."

C. Sample Language for Use by DPS in SS Act Cessation Notices to DQRR's Entitled to a Re-entitlement Period

1. The Re-entitlement Period has not Expired

a) SGA Causes Suspension During the Re-entitlement Period

"If your condition forces (you) (_____) to stop or limit working through 3 _____, your annuity may be paid for those months through 3 _____ in which this work stopped or was reduced below a certain level. Notify the nearest district office of the Board if this occurs.

In addition (your) (_____'s) coverage will continue for up to 24 additional months after 4 _____, unless (your)(his)(her) condition improves. This means that Medicare coverage will end after 2 _____.

b) No SGA After 3rd Month of Reentitlement Period Prevents Suspension

"Although (your) (_____'s) disability under the SS Act ceased because of work on 1 _____, an increased amount in your annuity may still be paid through 4 _____, since (you are)(he is)(she is) not working. If (you begin)(he begins)(she begins) working again, notify the nearest district office of the Board.

In addition, (your) (_____'s) disability Medicare coverage may continue unless (your)(his)(her) condition improves or (you begin)(he begins)(she begins) working after 3 _____."

2. The Re-entitlement Period has Expired

a) SGA After 3rd Month of Re-entitlement Period

"Although (you) SS Act disability ceased on 1 _____, because of work, (your)(his)(her) disability Medicare coverage will continue until 2 _____ unless (your)(his)(her) condition improves. You will receive a separate notice if we owe you money of if you are overpaid."

b) No SGA After 3rd Month of Re-entitlement Period

"Although (your) (_____'s) SS Act disability ceased on 1 _____, because of work, an increased amount in your annuity was still payable through 3 _____ since (you)(he)(she) had not worked. This amount is no longer payable. You will receive a separate notice if we owe you money or if you are overpaid.

However, (your)(his)(her) disability Medicare coverage will continue through 2 _____, unless (your)(his)(her) condition improves."

3. Miscellaneous IRWE Sample Language For Use by DPS

a) Allow IRWE Insufficient to Reduce Earnings Below SGA Level

"Although (you)(_____) reported impairment related work expenses which we allowed, they were not enough to reduce (your) (_____'s) earnings below the monthly amount usually considered to be substantial gainful work."

b) "Although (you)(_____) reported impairment related work expenses, we cannot allow them because they do not meet the definition of impairment related work expenses."

10.7 Medicare

10.7.1 Termination Of SMI Coverage

A. General Rule - When an annuitant recovers from disability, SMI coverage ends with the later of:

The last month of entitlement to a monthly disability benefit, or

The month after the month the beneficiary is notified in writing of the termination of monthly disability benefits.

B. Extended Medicare Coverage - Beginning December 1, 1980, Medicare coverage may continue for up to 24 additional months but only if disability is terminated solely due to SGA. This provision is part of Public Law 96-265, the SS Disability Amendments of 1980.

10.7.2 How To Apply Extended Medicare Coverage

If the annuitant is not entitled to a TWP, the extended Medicare coverage begins the first month after the disability benefit entitlement ends due to SGA.

If the annuitant is entitled to a re-entitlement period, the extended Medicare coverage begins the first month after the end of the re-entitlement period. (See DCM 10.5.5) In this case, Medicare coverage would run 48 months after the beneficiary returned to SGA. That is the 9-month TWP plus the 15-month re-entitlement period plus the 24 months of extended coverage.

NOTE: If medical recovery occurs at any point during the TWP or Re-entitlement period, Medicare coverage ceases according to the general rule in DCM 10.7.1(A).

10.7.3 Who Is Eligible For Extended Medicare Coverage

All railroad retirement or survivor disability Medicare beneficiaries whose disability terminates under SS Act rules (DQRRB's) because of SGA are entitled.

10.7.4 Mechanical Termination Of Medicare Coverage

The following action is required to ensure that Medicare will terminate mechanically at the end of the applicable extension period:

1) If CHICO shows a disability annuity in current pay status or suspense

Prepare Form G-96, enter termination code "20" in item 7. Enter the last month of disability annuity entitlement in item 12.

Reminder - When terminating a suspended annuity, do not enter an "X" in item 10.

2) If CHICO shows annuity terminated, but either no termination effective date is shown, or the termination effective date is earlier than the one presently on record

Prepare Form G-96 (same as above). Enter termination code "20" in item 7 and last month of disability annuity entitlement in item 12.

3) If CHICO shows annuity terminated and the termination effective date in the record is correct or earlier than the correct effective date

Prepare Form G-811. Enter activity code "51" in item 3. In item 8, enter event code "9" and the last month of disability annuity entitlement.

4) If no record on CHICO

Prepare Form G-811. Enter activity code "51" in item 3. In item 8, enter event code "9" and the last month of disability annuity entitlement.

5) If entitlement of a DQRRB annuitant terminates after the re-entitlement period due to SGA

Prepare Form G-811. Enter activity code "51" in item 3. In item 8, enter event code "9" and the last month of the re-entitlement period.

Following the action created by G-96 or G-811, the MIRTEL system will reflect a future HI/SMI termination date effective the 25th month after the last month f the re-entitlement period or disability annuity entitlement, and a term code "3". The record status will remain unchanged until the actual termination action processes. At the scheduled time of termination, the following action will occur:

If the beneficiary is an employee or spouse now over age 65 entitlement to Medicare based on the attainment of age 65 will override the scheduled termination. No manual action is necessary in these cases. The record will be mechanically cleared of the termination and entitlement will continue uninterrupted.

If the beneficiary is an employee or spouse not yet 65 or any other type beneficiary (widow(er), child, etc., regardless of age) Medicare will be terminated effective with the 25th month after "the last month of the re-entitlement period or disability annuity entitlement. The record status will become "90". The HI/SMI termination code shown would still be "3". A folder notice will be prepared

showing the termination processing action completed. The reason for termination shown on the folder notice will be "cess of DIB".

If for any reason, it is determined that a termination action should not be taken when the record has been set up to do so, sent the case to MPS to remove the scheduled termination from the record.

If a beneficiary scheduled for Medicare termination becomes entitled to an annuity, Medicare premiums will automatically be deducted mechanically. Since the reinstated annuity is possibly not based on disability (e.g., a retirement annuity based on the 60/30 provisions), a referral will be produced for MPS:

"Alert - Annuity Adjusted During Medicare Extension Period."

MPS will determine whether or not Medicare deductions should continue.

10.8 Disability Related Work Expenses

10.8.1 Overview

The cost of what a person needs in order to work can be deducted from the earnings used to determine whether a disability annuitant has performed substantial gainful employment. The cost of these items and service, called impairment-related work expenses (IRWE), can be deducted even if the services and items are also needed for non-work activities.

Effective January 1, 1989, the cost of these same items and services can also be deducted from a disability annuitant's earnings which are used to determine whether work deductions must be imposed. Prior to the 1988 Amendments, these expenses were not deductible for this purpose. When these expenses are deducted for work deduction purposes, they are called disability related work expenses (DRWE).

DRWE can be considered when deductions to the payment of an occupational disability annuity (RRA section 2(a)(4)) or total and permanent disability annuity (RRA section 2(a)(5)) are being considered.

These expenses which include attendant care, medical devices, equipment, prosthesis, or similar items or services are exactly the same as impairment related work expenses (DCM 10.4.6) and are subject to the same limitations.

10.8.2 How To Develop DRWE

Annuitants with DRWE and earnings over the current monthly disability earnings limit are being instructed to contact field offices in order to establish DRWE. Refer field personnel to FOM 310.55.1 which contains instructions on how to develop DRWE and IRWE.

10.8.3 Handling Of DRWE

DPS will use the guidelines in DCM 10.4.6(c) about IRWE to determine the amount deductible for DRWE. Worksheets in Appendix E may be used for both IRWE and DRWE.