or training or if it is work usually done in a daily routine around the house or in self-care.

We propose revisions to § 404.1592(d) to explain, consistent with Social Security Ruling 82–52, that a trial work period may not be awarded when a claimant performs work demonstrating the ability to engage in substantial gainful activity within 12 months after the alleged onset of disability and prior to an award of benefits. These revisions, which do not represent a change in policy, are based upon our interpretation of the duration requirement of section 223(d)(1)(A) of the Act and will clarify the issues raised by the courts in McDonald v. Bowen, 800 F.2d 153 (7th Cir. 1986), amended on rehearing, 818 F.2d 559 (7th Cir. 1987) and Walker v. Secretary of Health and Human Services, 943 F.2d 1257 (10th Cir. 1991).

The trial work period is a period during which a person who becomes entitled to title II benefits may test his or her ability to work and still be considered disabled. Under section 222(c)(3) of the Act, the trial work period begins with the month an individual "becomes entitled" to title II disability benefits and it generally ends after 9 months of work whether or not the 9 months are consecutive. Section 222(c) provides that work performed during the trial work period may not be considered in determining whether "disability has ceased" during that period.

In order to be found disabled under section 223(d)(1)(A), an individual must be unable to engage in substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or "which has lasted or can be expected to last for a continuous period of not less than 12 months.' (Emphasis added.) Under our longstanding interpretation of this provision as reflected in Social Security Ruling 82–52, the duration requirement to establish disability will be found not to have been met and a disability claim denied based on evidence that, within 12 months of the onset of an impairment which prevented substantial gainful activity and prior to an award of benefits, the impairment no longer prevents substantial gainful activity. Under these circumstances, it is not necessary to determine whether earlier in the 12-month period the impairment was expected to prevent the performance of substantial gainful activity for 12 months. We determine whether an impairment is expected to prevent substantial gainful activity for 12 months only when the claim is being

adjudicated within 12 months of onset and the evidence shows that the impairment currently prevents substantial gainful activity. We believe that Congress provided that disability can be found based on an impairment which "can be expected to last" 12 months simply to provide a means for the Social Security Administration to adjudicate disability claims without having to wait 12 months from the alleged onset of disability, rather than to permit claims to be allowed in the face of evidence that the claimant's impairment did not prevent substantial gainful activity for 12 continuous

Because section 222(c) provides that a trial work period shall begin with the month in which a person becomes entitled to title II disability benefits, a claimant who does not become entitled to disability benefits cannot receive a trial work period. Under our interpretation of the duration requirement, a person cannot be found to be under a disability if he or she performs work demonstrating the ability to perform substantial gainful activity within 12 months of onset and prior to an award of benefits. Because the person cannot become entitled to disability benefits in this situation, there can be no trial work period. On the other hand, if a claimant returns to work prior to an award of benefits, but more than 12 months from onset, the duration requirement may be satisfied, the claimant may become entitled to benefits, and the work may be protected by the trial work period even though the work began prior to an award of benefits.

We propose to revise § 404.1592(d)(2) by deleting the rule stating that an individual is not entitled to a trial work period if he or she is receiving disability insurance benefits in a second period of disability for which a waiting period was not required. We are also proposing to revise § 404.1592(e) to show that the trial work period ends when 9 service months are completed within a consecutive 60-month rolling period. Prior to a statutory change, the trial work period would end after 9 service months no matter when they were completed. These two proposed changes reflect section 5112 of Public Law (Pub. L.) 101-508 which took effect on January 1, 1992.

We are proposing to make minor wording changes to  $\S$  404.1592(d)(1) to establish consistency with the wording in  $\S$  404.1592(d)(2)(i). This rewording does not represent a change in our policy concerning who is entitled to a trial work period.

We are also proposing to add a new § 404.1592(d)(2)(iv) to clarify our policy, consistent with current § 404.1592(e), that an individual is not entitled to a trial work period if he or she demonstrates an ability to engage in substantial gainful activity level work at any time after the onset of the impairment(s) which prevented the individual from engaging in substantial gainful activity but before the month he or she files an application for disability benefits.

We are also proposing to amend § 404.1592a to clarify that the earnings averaging and unsuccessful work attempt concepts do not apply in determining whether to pay benefits for any month during or after the reentitlement period after disability has been determined to have ceased because of the performance of substantial gainful activity. Those concepts do apply during and after the reentitlement period in determining whether disability has ceased due to the performance of substantial gainful activity. This amendment reflects and clarifies Social Security Ruling 83-35 and Social Security Ruling 84-25. This amendment also will clarify the averaging methodology issue raised by the court in Conley v. Bowen, 859 F.2d 261 (2d Cir. 1988). These proposed rules also provide cross-references to § 404.1592a in the explanations of the averaging and unsuccessful work attempts concepts contained in §§ 404.1574(c), 404.1574a, and 404.1575(d).

These proposed regulations also reflect section 9010 of Pub. L. 100–203 which extended, as of January 1, 1988, the reentitlement period from 15 months to 36 months. During this extended reentitlement period, the title II benefits of a disabled individual whose benefits are stopped because of substantial gainful activity can be reinstated without the need to file a new application if his or her work falls below the substantial gainful activity level. These statutory changes are reflected in proposed amendments to \$\$ 404.321, 404.325 and 404.1592a.

Public Law 99–643 made a number of changes in the way we handle supplemental security income cases under title XVI of the Act when a disabled person, eligible for supplemental security income benefits, works. Certain supplemental security income recipients who work despite otherwise disabling impairments and begin to earn amounts that would ordinarily represent substantial gainful activity will not have their earnings considered when determining whether they continue to be disabled. Pursuant