

adopted by Order No. 572, requiring a case-in-chief if no protest is filed, cannot be characterized as a streamlining measure.

As discussed in Order No. 572, the Commission has fully complied with the mandate of the Act of 1992 by adopting the indexing methodology. The market-based ratemaking approach is not generally applicable and, in any event, as stated in Order No. 572, does streamline procedures as to those rates. Therefore, the Commission denies the AOPL's request for rehearing on the Commission's conclusion that it did not violate the Act of 1992.

#### *The Commission Orders*

The AOPL's request for rehearing of Order No. 572 is denied. By the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-116 Filed 1-3-95; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

#### 20 CFR Part 416

[Regulation No. 16]

RIN 0960-AC96

#### **Supplemental Security Income for the Aged, Blind, and Disabled; Waiver of Parent-to-Child Deeming for Certain Disabled Children**

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements section 8010 of the Omnibus Budget Reconciliation Act of 1989 which provides that a disabled child under age 18 who lives with his or her parent(s) will not have parental income or resources deemed to him or her if the child previously received a reduced supplemental security income (SSI) benefit (personal needs allowance) while a resident of a medical facility for which Medicaid paid more than 50 percent of the cost of the individual's care; the child is eligible for medical assistance under a Medicaid State home care plan; and the child would otherwise be ineligible for a Federal SSI benefit because of the deeming of the parents' income or resources. The rule also provides that, although deeming is waived in these circumstances, the in-kind support and maintenance provided by the parents will not be counted.

Lastly, when such a child would not be ineligible because of the deeming of his parents' income but would receive a benefit of less than the amount payable under section 8010, the child's benefit will be \$30 a month plus any optional State supplementation. Any of the child's own countable income will then be deducted from that amount.

**EFFECTIVE DATE:** This rule is effective January 4, 1995.

#### **FOR FURTHER INFORMATION CONTACT:**

Sandy Bond, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1794.

**SUPPLEMENTARY INFORMATION:** Section 1614(f)(2) of the Social Security Act (the Act), requires that, for purposes of determining eligibility for and the amount of SSI benefits, the income and resources of a child under age 18 be deemed to include the income and resources of a parent (or spouse of a parent) who is living in the same household as the child, except to the extent determined by the Secretary to be inequitable under the circumstances. Regulations at § 416.1160 through § 416.1169 explain how we deem income and when it is inequitable to deem part or all of that income. Regulations at § 416.1202 through § 416.1204a explain how we deem resources.

Section 8010(a) of Pub. L. 101-239 amended section 1614(f)(2) of the Act to provide that parental income and resources shall not be deemed to any child under age 18 who is disabled, received SSI benefits under section 1611(e)(1)(B) while in an institution described in that section, is eligible for medical assistance under a State home care plan approved by the Secretary under the provisions of section 1915(c) of the Act or authorized under section 1902(e)(3), and, except for this waiver of deeming, would not be eligible for a Federal SSI benefit. Section 8010(b) amended section 1611(e)(1)(B) of the Act to include eligible children as described in section 1614(f)(2)(B) of the Act, among those eligible for the SSI personal needs allowance. These provisions became effective June 1, 1990.

The regulation provides that we do not deem parental income and resources to disabled children who:

- Previously received SSI personal needs allowance benefits while residents of a medical facility for which Medicaid paid more than fifty percent of the cost of the individuals' care;
- Are eligible for medical assistance under Medicaid State home care plans approved by the Secretary under the provisions of section 1915(c) of the Act

or authorized under section 1902(e)(3); and

- Would otherwise be ineligible for a Federal SSI benefit because of the deeming of their parents' income and/or resources.

The regulation also provides that children for whom the deeming rules are waived may be eligible to receive an SSI benefit up to the personal needs allowance (currently \$30 monthly), plus an optional State supplement in certain States. The optional State supplement payable to a child for whom the deeming rules are waived will be determined by the State and, if the supplement is administered by the Federal government, set out in Federal/State agreements.

Further, the regulation states that in-kind support and maintenance provided by a child's parent(s), which we do not count when deeming of parental income applies, also will not count when deeming of parental income is waived under section 1614(f)(2) of the Act. Otherwise, the counting of such in-kind support and maintenance could negate the beneficial effect of section 8010 of Pub. L. 101-239.

Finally, the regulation addresses the situation of children who do not meet the criteria for waiver of deeming only because parental income is not high enough to make them ineligible for SSI benefits but is high enough to result in an SSI payment that is less than the amount that would be payable under section 8010 of Pub. L. 101-239. Under the regulation, such children would receive an SSI benefit up to the personal needs allowance plus any optional State supplement. Any of the child's own countable income would then be deducted from that amount. This change is being made under the Secretary's discretionary deeming authority in section 1614(f)(2)(A) of the Act which allows the Secretary to determine the extent to which deeming of parental income and resources is inequitable under the circumstances. This change is necessary to prevent anomalies from being introduced into parent-to-child deeming.

We published this regulation as a notice of proposed rulemaking (NPRM) on September 22, 1993, (58 FR 49249). The 60-day comment period ended on November 22, 1993. We received no comments and are adopting the regulation as proposed.

#### **Regulatory Procedures**

##### *Executive Order No. 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet