

# SECTION 301

## Your Path to Success!

Answers To Your Work Questions  
From NYS PROMISE

# Social Security Section 301 Rule

Your SSI Payments Can Continue after a Review Says You No Longer Have a Disability, if You Continue in a Special Education Program, Participate in a PROMISE Treatment Group, or Continue in Another Vocational Program.

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**PROMISE**  
your Path to Success!

This brochure includes calculations and numbers that reflect 2018 standards.

# In This Guide

The purpose of this guide is to educate New York youth with disabilities and their families about how and when the Supplemental Security Income (SSI) program will review your case to see if you continue to have a disability.

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# SSI Benefits Can be Terminated Following a Medical Review

## Beneficiary Receives SSI Only and Works

A person qualifies for either Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) payments based on a finding of disability. With SSI the person must also have limited income and resources. These programs will review your case from time to time to see if your medical disability still qualifies you for benefits. Social Security can review you in two different ways:

- **Medical Continuing Disability Review (CDR).** The SSI review applies to children under 18 and adults age 18 or older. The SSDI review applies to adults. During this review, Social Security looks at medical information and school records, for example, to see if you still meet the SSI or SSDI disability test. If Social Security decides you are still disabled, your benefits will continue. If they decide you have improved and no longer meet the disability test, they will send a letter to let you know this and to let you know your benefits will end. You can appeal this decision and ask that your SSI or SSDI payments continue during the appeal.
- **SSI Age 18 Redetermination.** The SSI program has one disability test for a child under 18 and a separate disability test for an adult, age 18 or older. When a child reaches age 18, the SSI program will do a medical review to see if he or she meets the adult disability test. If the adult disability test is met, SSI payments will continue. If they decide that you do not meet the adult disability test, they will send you a letter to let you know this and to let you know your SSI benefits will end. Like the medical CDR decision, you can appeal and ask that your SSI continues during the appeal.

## The Section 301 Rule

Section 301 allows your SSI or SSDI benefits to continue if you are found to be no longer disabled or not disabled under adult SSI criteria.

As explained below, Section 301 applies when you are involved in certain vocational and other programs that are likely to lead to employment and no future need for SSI or SSDI.

## Why an appeal with continued SSI (or SSDI) might not be available?

Section 301 protections are important if an appeal cannot or will not be pursued to continue benefits. Here are some examples of when that might be the case.

**Missing the appeal deadline:** A person usually has 60 days to appeal after getting an SSI termination notice. If the appeal is not requested within 60 days, there is no right to appeal later except when there is a very good excuse for missing the deadline.

**Missing the deadline to request continued benefits:** A person usually has 10 days after getting the notice of termination to request an appeal with continued benefits. Even if they appeal within 60 days, they will likely miss out on continued benefits if not requested within 10 days or if they appeal and never request continued benefits.

**Person believes they do not meet disability test and does not appeal:** Even if the medical condition does not go away completely, it may have improved enough to no longer meet the SSI or SSDI disability test, or not meet SSI's disability test for adults. In a case like this, the person may decide not to appeal.

**Person loses appeal at the hearing level:** The right to continued benefits ends if a hearing decision finds that the person is no longer disabled or not disabled under the adult SSI criteria.

In all these cases, Section 301 could be available for a period of several months or even several years to continue benefits.

## Section 301: Key Requirements

Section 301 was put in place to protect benefits of persons who participate in an approved "vocational rehabilitation" (VR) program. If participation in that program starts before the disability ended, both cash payments (SSI or SSDI) and health insurance (Medicaid or Medicare) can continue in many cases. For example, if a person had started a college program, sponsored by New York's ACCES-VR, before the finding of no longer being disabled, Section 301 could allow benefits to

continue throughout the college years. In that case, the Social Security Administration (SSA) would have to decide that continuing the college program would likely result in a job that will keep the person off SSI or SSDI in the future. Section 301 protections can also keep benefits coming for the young person who stays in school, continues to participate in a PROMISE treatment group, or continues to participate in a number of other programs.

If you get a notice that your benefits will be terminated following a Medical CDR or an SSI Age 18 Redetermination, there are two key requirements you must meet to keep getting benefits under Section 301:

- You must be participating in a vocational rehabilitation (VR) program, or other program acceptable to Social Security (like a special education program or PROMISE) at the time the disability ends; and
- The program must be expected to “increase the likelihood” of eliminating the future need for disability benefits. (Keep in mind that this “likelihood” finding does not need to be met if you are using a special education program or PROMISE participation to benefit from Section 301.)

If you meet both requirements (or only the first requirement in some cases), your SSI or SSDI cash benefits and Medicaid/Medicare can continue as long as you continue to participate in the VR program or other special program.

## What Qualifies as an Approved Vocational Rehabilitation Program?

The following programs and services will usually meet Section 301 criteria if participation in them will make it more likely that a person will stay off SSI or SSDI in the future because of successful work activity:

- Services through an Individual Plan of Employment (IPE), provided by New York Adult Career & Continuing Ed Services - Vocational Rehabilitation (ACCES-VR) or the New York State Commission for the Blind (NYSCB)
- Services from an employment network (EN) through the Ticket to Work program
- Services from a private VR agency – this could include agencies who serve a person through ACCES-VR or NYSCB funding, or who serve the person as an EN under the Ticket to Work program

- Special education services pursuant to an Individualized Educational Plan (IEP), even if there is no current vocational component
- Treatment services through the PROMISE demonstration program
- Services through an approved SSI Plan to Achieve Self-Support (PASS)
- Services through any other program that is designed to assist the participant to achieve a work goal

## Special Section 301 Rules

### Different Rules for Students Getting Services through a Section 504 Plan

Some students get special services while in high school under section 504 of the federal Rehabilitation Act. Those services usually involve a written plan without the same detail as the IEP used in special education. Social Security is required, for these students, to decide whether completing the plan will make it more likely that the student will succeed at work and not need SSI in the future. Only then can the student get continued SSI benefits under Section 301.

### Moving from High School to an Adult VR or College Program

A student between ages 18 and 21 has Section 301 protection for participating in a special education program with an IEP. What happens if that student leaves high school and does not begin an adult VR program for a month or two? If the adult program meets the Section 301 criteria and the person begins it within three full calendar months after the end of the month they left high school, SSA will consider the high school program and adult program to be in “one continuous period of participation” and allow Section 301 protection.



**The Case of Tom:** He continued to get SSI benefits because of section 301 while in a special education program with an IEP. He leaves high school the last week of June. With ACCES-VR sponsorship, Tom starts attending a work preparation program designed to give him skills to obtain a job. He starts that program on September 21st. Since Tom left his high school program in June, he has three full calendar months – July, August,

and September – to start the adult program in order to continue his Section 301 protection. Since he started the adult program before the end of September, SSA will consider the high school special education program and the adult training program as “one continuous period of participation” and he will be protected by Section 301. His SSI benefits will continue until the training program ends.

### Three-Month Grace Period for Temporary Interruption in Program Participation

In the above example, let’s assume Tom stops attending the adult training program on December 20th. On March 1st Tom is able to go back to the program and continue his training. Since Tom left his VR program in December, he has three full calendar months – January, February, and March – to go back to the program and resume his training to continue his Section 301 protection. Since he resumed his VR program before the end of March, SSA will consider his interruption temporary and Section 301 will allow his SSI benefits to continue until he completes the program.

## Four Examples of Continued Benefits Through Section 301



#### **EXAMPLE 1: Christina, an SSI beneficiary, is participating in PROMISE.**

At age 16, she was getting SSI and enrolled in a PROMISE treatment group when the SSI program started a Medical Continuing Disability Review. After the review, Christina’s grandmother got an SSI notice saying she was no longer disabled and that her SSI would be terminated. No appeal was filed within the 60-day appeal deadline. Unless Christina or her grandmother can provide a very good excuse for missing this deadline, it will be too late to appeal.

Section 301 will allow Christina’s benefits to continue because she continues to participate in PROMISE. With PROMISE, there does not need to be a special review of Christina’s services. This is because Social Security has decided that anyone who gets PROMISE services has a better chance of getting a job in the future and not needing SSI benefits in the future. When PROMISE services end Christina’s right to continued SSI payments under Section 301 will probably end as well,

but could continue if she is now getting services through another program as we explain in Example 2.

**EXAMPLE 2: Christina graduates from high school and now gets help from ACCES-VR to attend a six-month vocational program.**

Christina stays in school and in June gets her high school diploma at age 19. Her PROMISE services end in July. Christina kept getting SSI, through Section 301, after she was found to be no longer disabled because she stayed involved with PROMISE. These special SSI benefits were scheduled to end when her PROMISE services ended, but SSI may now continue because of help she gets from ACCES-VR.

During high school Christina did an unpaid internship at a local auto collision shop. She liked the work and did well on tasks assigned to her. In September (three months after graduation), with the help of ACCES-VR, Christina enrolled in a six-month program to learn more about auto body and collision work with a goal of working in that field. ACCES-VR agreed to pay her tuition, transportation costs to and from the program, and for a tutor to help her understand some of the course materials. ACCES-VR also contracted with ABC Employment Services for additional services. After completion of the auto collision program, ABC helped Christina prepare a resume, helped her look for a job, and helped her prepare for job interviews.

Within three months of completing the collision program Christina found a full-time job with ABC's help. During the first three months on the job, ABC Employment Services staff met every two weeks with Christina and her work supervisor to see how the job was going and see if she needed any extra assistance on the job or outside of work to learn the job. Since Christina did well at the job, after those three months both ABC Employment Services and ACCES-VR closed their cases based on this success.

Christina was able to continue getting SSI benefits through Section 301 for the training program, her job search, and the first three months on the job – a total period of about 12 months. This is because the vocational program was sponsored by ACCES-VR, started within three calendar months of the end of PROMISE services, and was expected to lead to work and the end of her need for SSI.

**EXAMPLE 3: Eric continues in a special education program after Age 18 Redetermination.**

Eric is age 18, gets SSI because of a disability, and lives with his mother. As a high school sophomore, he attends regular classes and gets both



resource room help and occupational therapy through the special education system. Following an Age 18 Redetermination, the SSI program sent him a notice saying he was not disabled under the SSI adult disability test and explaining that his SSI would be terminated. Eric's mother misplaced the SSI notice and did not appeal the decision until about 40 days after receiving the notice. This appeal was filed within the 60-day time limit but it was too late to ask for continued SSI payments during the appeal.

Eric and his mother met with his PROMISE benefits adviser who explained that Section 301 would allow his SSI benefits to continue so long as he continued getting special education benefits through an IEP. The benefits adviser also explained that he has a right to keep getting special education services until the end of the school year when he turns 21 unless he gets a regular high school diploma before that. Eric decides he will stay in school and work with the school and PROMISE staff to try to get a paid job while he is still a student, knowing that his SSI will continue for up to three more years even if he loses his SSI appeal.

**EXAMPLE 4: Simone is sponsored by ACCES-VR to attend college program.**

Simone received SSI benefits as she entered her last year of high school. Throughout that last year she received special education services to help with reading problems associated with a learning disability. She turned 18 in October of that year and in February the SSI program started an Age 18 Redetermination. In July, after graduation, the SSI program sent her a notice saying she was not disabled under the SSI adult disability test and explaining that her SSI would be terminated. She and her father decided to appeal but did not ask for continuing benefits under Section 301 during the appeal.

ACCES-VR agreed to sponsor Simone to attend a college program to become a Spanish teacher. The ACCES-VR Individualized Plan of Employment (IPE) is dated August 10th. Simone graduated in June, and her college program will start in September. ACCES-VR will pay for tuition, books, transportation to campus, and some incidental costs. Since a Master's degree is required to obtain a permanent teaching certification, the ACCES-VR sponsorship will be for a minimum of five years.

Simone's SSI benefits can continue under Section 301. This is because ACCES-VR is an approved vocational program, the ACCES-VR sponsorship began in August, within three months of her special education

services ending, and the college program is likely to lead to a teaching job that will end any need for SSI. Since her ACCES-sponsored program will continue for at least five years, her SSI benefits will continue under Section 301 for that full period or for any period of time in which the ACCES-VR sponsorship continues.

## Are There Any Other Incentives That Can Support Work?

The SSI program has other work incentives available that act as income exclusions or disregards. These work incentives can be deducted from gross monthly earnings as part of Social Security's calculation in determining the amount of your adjusted SSI cash benefit. A brief description of each follows:

**The \$20/\$65 Plus 50 Percent of Remaining Earnings Exclusion** allows the SSI beneficiary to reduce their countable gross monthly unearned income by \$20 and earnings by \$65 (or \$85 if no unearned income) plus another 50 percent of the remaining earned income.

**Impairment-Related Work Expenses (IRWE)** are work expenses related to a disability, or medical condition for which they receive treatment, that are needed to work and are paid for by the individual.

**Blind Work Expenses (BWE)** are any ordinary and necessary expenses related to the earning of income for an individual who is blind and are paid for by that individual.

**Plan to Achieve Self-Support (PASS)** allows an individual to set aside their own income and/or resources in a special account, not counted for SSI purposes, with the money to be used for expenses that will support their long-term work goal.

**Student-Earned Income Exclusion (SEIE)** helps students under the age of 22 who regularly attend school, receive SSI, and work to exclude up to \$1,870 per month up to a maximum of \$7,550 per year in 2019. These figures change each year.

These are all SSI work incentives and can positively affect the amount of an individual's SSI cash benefit. The impact of each is determined by the placement of the exclusion in the SSI calculation. Note that later guides on these work incentives will be available to provide more detailed information on how they work.

## What if I Have Questions About How My Benefits will be Impacted by Going to Work?

If you have any questions about how your benefits will be impacted by going to work, you can contact specialists to assist you toll-free at 1-888-224-3272. The hotline is available during business hours Monday through Friday, except on holidays. Every effort will be made to return calls the same day or within one business day.

Additionally, SSA has contracted with local organizations to provide work incentive and planning services for SSDI and SSI beneficiaries. The Work Incentive Planning Assistance (WIPA) agencies have people who have been specially trained to help individuals with disabilities who are considering going to work or who are working. You can get a list of the WIPAs in New York at: <http://www.chooseworkttw.net/find-help/> (search by state or zipcode).

If you are involved in the PROMISE project, you are entitled to the benefits advisement service, which includes work incentives counseling. If you do not have a benefits adviser assigned to you, ask your PROMISE case manager to refer you for this service.

Questions about how earnings  
impact your disability benefits?  
*Call us toll-free at 1-888-224-3272*

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