



Is Self-Employment Right for You?

Given the high unemployment rate for individuals with disabilities, many have turned to self-employment, which may also offer schedule flexibility and the ability to work at home. In some cases, painting or writing can become a source of income. Or an individual may turn to entrepreneurship, building a business that provides work to others, as well. What does this mean for means-tested public benefits such as Supplemental Security Income (SSI) or Medicaid, which may be important to their financial security? Both the Social Security Administration (SSA) and Medicaid have programs designed to encourage individuals with disabilities to work without losing benefits.

Social Security

In order to be eligible for SSDI (Social Security Disability Income), an individual cannot be engaged in [Substantial Gainful Activity \(SGA\)](#), defined for 2019 as monthly earnings of \$1220 or more. SSI eligibility is not tied to SGA and has a complicated method for calculating eligibility based on both earned and unearned income. But for both programs, the way income is treated depends on whether it results from a *hobby, wages, or self-employment*.

SSA defines self-employment as:

- the intent to produce income or profit;
- regular activity and transactions; and
- public claims that one is selling goods or services.

Proceeds from a *hobby* are considered unearned income, causing a dollar-for-dollar reduction in SSI after the initial \$20, but having no effect on SSDI (Social Security Disability Income).

Income from *wages* will reduce monthly SSI payments by 50 cents for every dollar of wages greater than \$85 *received* during a given month. Gross wages are considered towards SGA for SSDI. Both programs allow for deduction of Impairment Related Work Expenses (IRWEs) from gross wages.

Self-employment income is handled yet another way. Net earnings equals gross income minus permitted business deductions, but SSI and SSDI have somewhat different ways of arriving at that number.

SSI

For SSI, the determination is made based on when income is *received* and, unlike SSDI, SSI considers in-kind payments to the business of food, shelter or other goods to be income. It assesses them based on current market value. In-kind gifts received outside the course of business constitute unearned income, causing dollar-for-dollar subtractions from SSI payments after the first \$20 for each affected month.

In addition, SSI allows self-employed individuals to hold greater assets than the \$2,000 permitted to others. Self-employed persons may have \$6000 of Property Essential for Self-Support, and there is no limit to property used for the individual's business.

SSDI

SSDI, on the other hand, calculates income based on when it is *earned*. It also allows a number of special deductions, including:

- Unpaid help from others, valued at the prevailing wage rate, as well as business expenses paid by others on the individual's behalf;
- Disability-related work expenses paid by the individual;
- Soil bank payments received by farm operators;
- Half of self-employment payroll taxes (FICA).

In addition, SSDI grants individuals a nine-month [Trial Work Period \(TWP\)](#), during which earnings—whether from wages or self-employment – do not affect benefits. Trial months need not be consecutive and are defined as being months in which an individual earns over \$880 and devotes 80 or more hours to their job. If one's average earnings exceed SGA during the trial period, SSDI is discontinued.

Following TWP, SSDI determines whether or not the individual is engaging in SGA based on three tests:

- Performance of “significant services” and receipt of “substantial income”;
- Work comparable to that of someone without disabilities;
- Clearly worth more than SGA.

If a business owner has paid employees, a question arises concerning whether or not the owner is contributing “significant services.” Participation is considered “significant” if they spend over 45 hours monthly managing the company or contribute over 50 percent of the time needed to oversee its operations. If they are not performing “significant services,”

profits from the venture may be classified as unearned income, which has no effect on SSDI.

However, if the individual doesn't meet the \$1220 threshold, they may still be found to be engaging in SGA if:

- similar work is being performed at the SGA level in the community by individuals without disabilities;
- their work is reasonably worth SGA based on the effect that their contribution has on the business, or
- if paying someone else to perform their duties would be valued at the SGA level.

If income falls below SGA within the six months following TWP, the venture is classified as an "unsuccessful work attempt." Once someone has been receiving SSDI for 24 months, whether or not they are engaged in SGA is determined by evaluating only the income represented by the individual's own productivity minus allowable deductions.

For 36 months following TWP, individuals remain eligible for SSDI during months when their earnings are below the SGA threshold. At the end of this extended period of eligibility (EPI), SSDI will be terminated the first time monthly earnings reach SGA.

Considering the complexity and strictness of the rules, Social Security benefits may often be lost, depending on the nature and extent of the work.

Medicaid

Medicaid for Employed Adults with Disabilities (MEAD) was established under 42 USC 1396a(a)**10**(A)(ii)(XV) or a waiver program in your state to enable working individuals to maintain Medicaid coverage, while retaining a certain amount of income and assets resulting from employment. It's more lenient than Social Security and differs by state (including its name) and is not available everywhere.

While there are income restraints tied to MEAD participation, many states do not use SGA to determine eligibility. In fact, [in New Hampshire](#), where I practice law, participants are permitted to earn up to \$54,636 annually as of 2019, and to have savings up to \$27,620. Depending upon the state, a monthly premium may be charged for income above certain levels.

MEAD Accounts

MEAD permits participants to protect their earnings by establishing various specialized accounts. It's important not to commingle those funds with Social Security accounts, special needs trusts (SNTs) or ABLE accounts.

- MEAD employability accounts – May be used for operating capital, inventory, work-related attendant care and transportation and other employability needs.
- MEAD medical savings accounts – May be used for deductions, co-pays, and other costs not covered by Medicaid.
- MEAD protected earned income account – Funds held by such accounts are excluded when determining continued MEAD coverage. Guidelines differ by state, but it's limited to \$27,620 in New Hampshire.

New Hampshire's MEAD was established in 2002 and has been highly successful. If no similar program exists in your state, consider advocating for it with your legislators. The federal statute authorizing states to establish their own MEAD programs is designed to encourage innovation. We found it easy to gain broad acceptance here, given its purpose of encouraging individuals to work.

Taxes

Successful entrepreneurs may find themselves liable for income taxes, and they should consult CPAs knowledgeable in disability deductions and exemptions. Here are a few considerations:

- Individuals making income equal or less than the current standard deduction of \$12,200 do not need to file for tax year 2019.
- Federal tax regulations exempt Social Security payments up to \$25,000.
- Individuals with disabilities are allowed a 7.65 percent deduction on the payroll tax (FICA) levied by Social Security
- Earned income that's deposited into ABLE accounts is taxable, although such funds can *grow* tax-free.

SNTs and ABLE Accounts

[SNTs and ABLE accounts](#) can work together well to further the economic independence of self-employed individuals with disabilities, while protecting their means-tested benefits. Each has its own array of regulations which must be followed in order to avoid negative consequences.

For instance, ABLE accounts can be managed by the beneficiary, but have contribution limits—\$15,000 annually as of 2019. SNTs have no such limits but distributions are made at the sole discretion of a trustee. If SNT distributions are used for food or shelter, SSI payments will decrease, which is not the case with ABLE expenditures.

As an example, in New Hampshire, someone might transfer funds from their MEAD earned income account into an SNT. Then, as needed, a trustee could transfer funds from their first party SNT to an ABLE account up to its \$15,000 annual limit. In this way, they could optimize their control of earnings while maintaining important government benefits.

In summary, there's a lot to consider before going the entrepreneurial route. Be sure to consult both a special needs attorney and CPA before making big decisions. But if it's a fit for you or a loved one, it can deliver profit, a sense of fulfillment and a flexible lifestyle.

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