

vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security.

We propose to revise §§ 404.316(c)(1), 404.337(c)(1), 404.352(d)(1), 404.902(s), 404.1586(g)(1), 404.1596(c)(4), 404.1597(a), 416.1321(d)(1), 416.1331(a) and (b), 416.1338(a), and 416.1402(j) to take account of the amendments to sections 225(b)(1) and 1631(a)(6)(A) of the Act. In the proposed revisions to these sections of the regulations, we are proposing to use the term “an appropriate program of vocational rehabilitation services, employment services, or other support services” to refer to the program in which an individual must be participating in order to be considered for eligibility for continued benefits under sections 225(b) and 1631(a)(6) of the Act, as amended.

We also propose to amend our regulations by adding new §§ 404.327(a) and 416.1338(c) to explain the term “an appropriate program of vocational rehabilitation services, employment services, or other support services.” We explain that an appropriate program of vocational rehabilitation services, employment services, or other support services means one of the following:

- A program carried out under an individual work plan with an employment network under the Ticket to Work program;
- A program carried out under an individualized plan for employment with a State vocational rehabilitation agency operating under a State plan approved under title I of the Rehabilitation Act of 1973, as amended;
- A program which is carried out by an organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 750 *et seq.*).
- A program of vocational rehabilitation services, employment services, or other support services carried out under a similar individualized employment plan with another provider of services approved by us; or
- An individualized education program (IEP) developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of children with disabilities under the Individuals with Disabilities Education Act (IDEA), as amended (20 U.S.C. 1400 *et seq.*).

We also propose to include an appropriate cross-reference to § 404.327(a) or § 416.1338(c) in the

sections of the regulations which state the basic requirement that the individual must be participating in an appropriate program.

Definition of “Participating” in the Program

We propose to amend our regulations to add new §§ 404.327(b) and 416.1338(d) to explain when an individual will be considered to be “participating” in the program. Sections 225(b) and 1631(a)(6) of the Act and our existing regulations do not define the term “participating.”

Our existing operating instructions (published in 1986) use the term “actively involved” in a vocational rehabilitation program and define active participation in a State vocational rehabilitation program as placement in one of four State vocational rehabilitation agency status codes: vocational rehabilitation plan developed and approved; counseling and guidance; physical restoration; and training, including vocational and college training. Any other State vocational rehabilitation agency status codes are not considered active participation for purposes of continued benefit payments. Other providers of vocational rehabilitation services, employment services, or other support services do not use these codes and several State vocational rehabilitation agencies no longer use them.

Our operating instructions on demonstrating participation in a non-State vocational rehabilitation program require that we obtain information regarding the individual’s status, such as whether the individual is actively receiving services such as counseling and guidance, physical restoration, or academic, business, vocational, or other training. We use this information to determine on a case-by-case basis whether the individual’s status is equivalent to the State vocational rehabilitation status codes used to determine participation.

In proposed new §§ 404.327(b) and 416.1338(d), we explain the criteria we will use to determine whether an individual is “participating” in the program for purposes of continued benefit payments. We explain that for a program which is carried out under an individual work plan with an employment network, an individualized plan for employment with a State vocational rehabilitation agency, or a similar, individualized, written employment plan with another provider of services approved by us, we will consider the individual to be participating in the program if the individual is engaging in the activities

outlined in his or her plan. If the individual is age 18 through 21 and receiving services under an IEP developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of children with disabilities under the Individuals with Disabilities Education Act, we will consider the individual to be participating in the program if he or she is taking part in the activities or services outlined in his or her IEP. To meet our requirements for participation, the individual must be taking part in the activities outlined in his or her plan or program.

Determining Increased Likelihood of Permanent Removal From the Disability Benefit Rolls

We propose to amend our regulations to add new §§ 404.328 and 416.1338(e) to explain how we will determine whether an individual’s completion of or continuation in an appropriate program of vocational rehabilitation services, employment services, or other support services will increase the likelihood that the individual will not have to return to the disability benefit rolls. Sections 225(b) and 1631(a)(6) of the Act provide for continued benefits to persons who are no longer disabled due to medical recovery and who are participating in an appropriate program only if SSA can determine that completion or continuation of the program “will increase the likelihood” that the individual will remain permanently off the disability benefit rolls. As the individual is not disabled and, by definition, is able to engage in substantial gainful activity without the need for the program, there is already a “likelihood” that the individual will stay off the disability benefit rolls. Benefits may be continued to the individual only if completion or continuation of the program will “increase” this likelihood. For this reason, proposed new §§ 404.328 and 416.1338(e) will require, that, in order that we will make a determination that a program will increase the likelihood that an individual will not have to return to the disability benefit rolls, we must determine that completion of or participation in the program will provide the individual with:

- An improvement in the individual’s work experience so that he or she would be more likely to be able to do past relevant work, despite a possible future reduction in his or her residual functional capacity; or
- An improvement in any of the vocational factors of education, work experience, or skills so that he or she would be more likely to be able to do