

CHAPTER 2-1403, OFFSETSTABLE OF CONTENTS

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1. Purpose and Scope.

This Procedure Manual (PM) chapter describes the types of benefits or income which may offset benefits paid by the Division of Coal Mine Workers' Compensation (DCMWC) Program; explains procedures for determining the amounts of offsets; discusses workers' compensation programs for pneumoconiosis by States; and discusses earnings offset computations.

2. Legislative Authority.

Section 422(g) of the Black Lung Benefits Act (BLBA); [20 CFR 725.533 - 725.539](#); [Public Law 98-21, Social Security Amendments of 1983](#); [Public Law 106-182](#).

3. Policy.

Federal Black Lung (BL) benefits are reduced by the amount of other Federal or State workers' compensation for pneumoconiosis received for any month of entitlement. For any miner claim filed on or after January 1, 1982, excess earnings are also a basis for offset. Additionally, any survivors' benefits payable to a parent or sibling are subject to offset for excess earnings during months of entitlement.

4. References.

a. [PM Exhibit 695, Earnings Offset: Chart of Annual and Monthly Exempt Amounts](#)

b. [DFEC Website for State Workers' Compensation Contacts: https://www.dol.gov/owcp/dfec/regs/compliance/wc.htm](#)

c. [Social Security Administration website retirement age calculator: https://www.ssa.gov/planners/retire/ageincrease.html](#)

5. Definitions.

a. Monthly Benefit Rates. Monthly benefit rates are payable in multiples of 10 cents. Any monthly benefit rate which, after the applicable computations, augmentations, and reductions is not a multiple of 10 cents, is increased to the next higher multiple of 10 cents.

b. Excess Earnings Offset. Compensation payable to certain beneficiaries who become entitled to benefits prior to reaching "full retirement age" may be subject to offset for earnings which exceed the limits set by Social Security.

(1) Miners. Miner beneficiaries who filed after December 31, 1981.

(2) Parent or Sibling. A parent or sibling beneficiary is subject to earnings offset for any month which they are entitled to BL benefits.

c. Federal Benefits. Any compensation or benefits received under or pursuant to any Federal law including part B of title IV of the Act because of death or partial or total disability due to pneumoconiosis may be used to offset Part C benefits.

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- d. Offset. An offset is a reduction in benefits paid to a claimant on account of a comparable payment from another source.
- e. State Workers' Compensation Benefits. Any compensation or benefits received under any State workers' compensation law because of death or partial or total disability due to pneumoconiosis may offset Part C BLBA benefits.
6. Responsibilities.
- a. District Director. The district director (DD) with jurisdiction over a particular claim determines the amount and duration of offsets applicable to the claimant's benefits. The DD may designate one or more claims staff to carry out these responsibilities.
7. Workers' Compensation Offsets.
- a. Award of Federal or State Benefits due to Coal Workers' Pneumoconiosis (CWP). Federal BL benefits are offset to avoid duplicating benefits the beneficiary is receiving from another Federal or State award for CWP.
- b. Offset Amounts. Federal benefits are offset for the full amount (dollar-for-dollar) of the State benefits being received monthly. If State benefits are less than Federal benefits, the claimant will receive partial monthly benefits. If State benefits exceed Federal benefits, the claimant will be "totally" offset and therefore receive no monthly Federal benefits for the duration of the State award.
- To decide if an offset is required in a particular case, the claims staff must determine:
- (1) Award. If the claimant is receiving State or Federal Benefits for pneumoconiosis, and
- (2) Amount. The effective monthly rate of the State or Federal benefits.
- c. Benefits From Other Federal BL Claims. Other benefits which would result in offsets include entitlement to both Part B and C BL benefit or entitlement to benefits under multiple records.
- d. Benefits That Do Not Offset Federal Black Lung Benefits. Types of benefits which may appear to qualify for offset, but do not require offset include the following:
- (1) Benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA): Miners engaged in coal transportation on navigable waters may be eligible to file under the LHWCA. The liability of the employer paying benefits under the LHWCA is exclusive, that is, it excludes all other liability under other laws. The employer can assert this provision (Section 5 of the LHWCA) as a defense against liability under the BLBA, so this situation is unlikely to occur. This should not be construed under any conditions as requiring a claimant to file under the

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LHWCA.

(2) Social Security Disability Insurance Benefits for Pneumoconiosis. A miner who files for and receives disability insurance benefits under the Social Security Act on the basis of pneumoconiosis is not subject to offset under the BLBA. Instead, his disability benefits are proportionately reduced by Social Security. The Social Security Administration is notified automatically of dual entitlement by the Branch of Fiscal Operations and Technical Support (BFOTS).

8. Verification of Receipt of Benefits.

The first source of information on compensation payments is the claimant's application. However, large and often irrecoverable overpayments can result from any error in this area. The claims staff should not rely solely on the claimant's allegation that no other claim has been filed. Misinterpretation of the question or a subsequent filing could be the cause for inaccurate information.

a. Request for State Workers' Compensation Information.

(1) State Workers' Compensation Pneumoconiosis Programs. Exhibit 100 discusses the workers' compensation programs for pneumoconiosis by State and provides links for contacting a state for information about an award.

(2) CM-905. During the initial development of a claim, form CM-905 will be sent to the state agency where the last coal mine exposure occurred. The template is available through the correspondence system.

(3) Subsequent Verification. At least annually, and at any time deemed necessary in an awarded claim, an update will be requested of the beneficiary and state agency to verify that the correct benefit amount is being paid.

9. Workers' Compensation Benefits That May Offset Federal BL Benefits.

To serve as a basis for offset, benefits must be for total or partial disability or death due to pneumoconiosis, as that term is defined in the Act. Thus, compensation for occupational dust diseases which do not arise from coal mine employment (CME), or compensation for injuries or conditions arising from CME, other than a chronic dust disease of the lung and its sequelae, do not offset federal BL benefits. "Coal mine employment" as used in this context means covered work in or around a coal mine or coal preparation facility. (See PM 2-600.)

a. Causal Relationship. To serve as a basis for offset, the compensable condition must be pneumoconiosis as defined under the BLBA, i.e., a chronic dust disease of the lung significantly related to, or substantially aggravated by, dust exposure from coal mine employment.

b. Example 1: Miner files for and receives Federal BL benefits based on 5 years CME. He subsequently files for and receives State compensation for silicosis arising from 25 years' work in a steel foundry subsequent to his CME. There is no offset of Federal benefits because State benefits are not compensation for pneumoconiosis (a

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chronic dust disease of the lung arising out of CME).

c. Example 2: Railroad employee receiving disability benefits for anthracosilicosis under the Railroad Retirement Act (RRA) files for and receives Federal BL benefits based on his work in coal transportation. Federal BL benefits are offset because RRA disability benefits in this case meet the BLBA definition of pneumoconiosis.

10. Effective Monthly Rate after Workers' Compensation Offset.

Benefits are reduced dollar-for-dollar by the amount of other benefits for disability or death due to pneumoconiosis the claimant actually receives during any month. Thus, amounts which are deducted from a claimant's benefits, such as attorney's fees and expenses, are not counted in computing the reduction in BL benefits.

a. Benefits Due. The amount of compensation for death or disability due to pneumoconiosis received in any month is subtracted from the Federal BL benefits for that month. If the amount subtracted is less than the Federal rate, the balance is paid to the claimant. If the reduction is greater than the amount of Federal benefits, there is a total offset, but Federal benefits payable may not be reduced below zero. Monthly BL benefits may only be reduced by the effective monthly rate of scheduled compensation payments, exclusive of medical treatment reimbursement, burial expenses, or any other additional benefits paid.

b. Coverage of Medical Treatment Costs. Medical benefits for treatment of disabling pneumoconiosis payable under a state or other federal law are treated differently than scheduled monthly benefits. Such medical benefits cannot be used to offset federal BL monetary or medical benefits. Instead, state or other federal medical benefits effectively supplant federal BL medical benefits. In such cases, only medical expenses covered under the BLBA which are not covered under the state or other federal award are payable.

11. Calculation of Workers' Compensation Offset.

a. 20 CFR 725.535(c). The Regulations specify that where compensation is paid weekly or biweekly, the effective monthly rate is $4 \frac{1}{3}$ and $2 \frac{1}{6}$ times the weekly rate respectively (do not use decimal figures (e.g., 4.33), or any other method of calculation, as this will cause results to vary slightly). (See 20 CFR 725.535.) Where prorating is required, such as part of a week carrying over to the following month, the weekly rate is divided by 7, or the biweekly rate by 14.

Prorating, normally, will not be required except at the beginning or end of scheduled compensation payments.

b. Payment Frequency. Benefits may be paid on a frequency other than weekly, biweekly, or monthly. In such cases, the effective monthly rate for offset purposes must be estimated in a way to make it equivalent to a monthly benefit amount. For example, lump sum payments are usually equivalent to payment for a certain number of weeks of disability at specified rates. Knowledge of the weekly rates for the period will permit a calculation of the effective monthly rate.

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c. Deductions from Award. Medical, legal, or other expenses may be deducted from a lump sum award. Requirements vary from State to State, but normally, deductions are made from the "beginning" of the award, which has the effect of moving the initial date of payment forward in time. In awards for which benefits are paid periodically, deductions may be made at a specified rate per week or per month. This will alter the effective monthly rate.

d. Prorating Benefits. Federal BL Benefits are never prorated. A claimant entitled for any month receives the entire benefit payable for such month, subject to reductions for receipt of State or Federal benefits, earnings offset (if applicable, see section 7 above), deduction for recovery of overpayment or payment of an attorney's fee. The amount of all reductions is subtracted from the benefits payable for the month.

e. Reminder Items Checklist.

(1) Award for CWP. Is the award based on CWP? If award is not based on CWP; no offset is applicable.

(2) Expenses. Does the payment rate include expenses? If yes, these amounts must be subtracted to determine the net amount of the award.

(3) Net Award. Identify the net amount of award.

(4) Payment Frequency. Identify the payment frequency.

(5) Convert the payment to a monthly equivalent:

(a) Weekly payment times $4\frac{1}{3}$ equals the monthly rate:
52 weekly payments divided by 12 months

(b) Bi-weekly payment times $2\frac{1}{6}$ equals the monthly rate:
26 bi-weekly payments divided by 12 months

(6) Offset Amount. The monthly equivalent rate is the amount the Federal Black Lung benefits will be reduced. The benefits will be reduced dollar for dollar of the other workers' compensation benefits.

(7) Amending the Award.

(a) If case is pending a final decision:

i. If pending PDO, include the offset in the award;

ii. If the case is in interim benefit status, issue an amended initial determination letter to address offset.

(b) If case has a final award, issue an amended award to address the offset.

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(8) Benefit Record. Create CM-1261 to adjust the benefit record.

(9) Document the Record. Upload the information to the imaged record under "Claim Development"; "CM-905/Other".

12. Excess Earnings Offsets.

The excess earnings offset applies to certain beneficiaries who have not yet achieved full retirement age (which has a precise definition). If the beneficiary earns income that exceeds a set limit for a year, his or her benefits are reduced. The reduction is not dollar for dollar; instead, it may be one for two or one for three dollars depending on the circumstances. Different rules apply depending on whether the beneficiary's income is earned in the year in which he or she achieves full retirement age.

a. Parents and Siblings. Benefit payments to a surviving parent or sibling are subject to an excess earnings offset as imposed by the Federal Coal Mine Health and Safety Act of 1969.

b. Miner Beneficiary. In addition, the 1981 Amendments to the BLBA impose the same excess earnings offset to the benefit payments for eligible miners who file a claim after December 31, 1981.

c. Other beneficiaries are not subject to offset for excess earnings.

d. Amendments to Social Security Act. Two significant changes in the Social Security Act have affected how to apply the earnings offset:

(1) Full Retirement Age. To reduce the cost of benefit payments, and considering the increase in life expectancy in recent years, amendments to the Social Security Act were enacted in 1983 setting up a sliding scale for attaining Full Retirement Age (FRA). The scale is based on the wage-earner's year of birth. Please refer to the table below when calculating a beneficiary's FRA:

Full Retirement Age	Year of Birth
65 years	1937 or earlier
65 years + 2 months	1938
65 years + 4 months	1939
65 years + 6 months	1940
65 years + 8 months	1941
65 years + 10 months	1942
66 years	1943 - 1954
66 years + 2 months	1955
66 years + 4 months	1956
66 years + 6 months	1957
66 years + 8 months	1958
66 years + 10 months	1959
67 Years	1960 or later

(2) Senior Citizens' Freedom to Work Act (P.L. 106-182). In April 2000, Congress passed and the President signed into law the Senior Citizens' Freedom to Work Act. This legislation eliminated

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the Social Security retirement earnings test in and after the month in which a person attains FRA. Elimination of the retirement test after FRA is effective with respect to taxable years ending after December 31, 1999.

e. Annual Earnings Test. Earnings include monies from wages (gross amounts), tips, in-kind payments (room and board), bonuses, vacation pay, severance pay for services rendered and self-employment (SE).

(1) Self-Employment. Self-employment is the performance of substantial services in any month. Substantial service is defined as services for 15 or more hours per month. The performance of more than 45 hours of service will always be deemed to be self-employment unless the claimant provides evidence to the contrary. Between 15 and 45 hours of service, the circumstances and factors involved must be considered, such as the skills of the individual, other employees and the net earnings of the individual. Services rendered by the self-employed claimant must be reviewed and the DD must determine whether such SE income can be treated as being earned from the performance of substantial services.

(2) Maximum Allowable Earnings. If a beneficiary, subject to an excess earnings offset, earns more than the maximum allowable earnings, that person's benefits are subject to offset of one dollar in benefits for every two dollars earned over the annual exempt amount, i.e., the total yearly earnings minus the annual exempt amount of earnings (see PM Exhibit 695) divided by 2 equals the yearly excess earnings offset.

f. Excess Earnings. The excess earnings offset is to be deducted from the total monthly benefits payable until the excess earnings offset has been equaled.

Note that two different exempt amounts may apply, one amount for beneficiaries under FRA and another for those FRA or older prior to 2000. A beneficiary age 72 prior to January 1, 1983 or age 70 by January 1, 1983 or thereafter is not subject to an excess earnings offset. The FRA exempt amount applies if the beneficiary attains FRA before the close of the taxable year. In computing the excess earnings offset, drop all cents (except in the benefit amount) in doing the computation.

(1) Example: A miner age 42 with two augmentees filed a claim on February 9, 2017 and was determined to be entitled to monthly benefits of \$1,139.10 beginning February 1, 2017. His 2017 earnings totaled \$40,000 and he did not earn less than \$1,410 in any month. The exempt amount would be \$40,000 minus \$16,920, which equals \$23,080. The excess earnings would be \$23,080 divided by 2, which equals \$11,540 for the year. The excess earnings would be \$961.67 per month (\$11,540/12).

In many cases, the earnings offset will be applied to back benefits due at the time of the award; offset will be addressed in the award and subtracted from any due benefits.

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If reductions are due against current benefits, the miner would not receive any benefits for 10 months (February-November) and \$990.10 (\$1,139.10 - 149.00) in the eleventh month (December). Full benefits would be payable in the twelfth month (January 2018). Any change in the benefit rate must be considered in the computation, as a general increase in monthly benefits is usually made in January of each year, or a change in the augmented rate may occur. A miner's excess earnings are charged against his/her benefits and the benefits of all augmentees entitled to benefits on the account.

(a) Survivor Benefits. A dependent survivor's excess earnings are charged only against the dependent survivor's benefits.

(2) Example: [This example pertains to the \$1.00 for \$3.00 offset to be applied during the last year before the beneficiary reaches FRA] A miner-beneficiary celebrates his FRA birthday in July 2018. So for the last 12 months prior to July 2018, we would deduct \$1.00 for each \$3.00 he earned above the exempt amount. Looking only at the year 2018, the year exempt amount would be \$45,360, and the monthly exempt amount would be \$3,780/month.

The miner will earn \$60,000 during 2018. For six months, that is \$30,000. The exempt amount would be \$22,680 (\$3,780 X 6). \$30,000 - \$22,680 = \$7,320 (the amount exceeding the exempt amount for the six months). If we are to subtract \$1.00 for each \$3.00 above the exempt amount, the amount to subtract for the six months is \$2,440 (\$7,320/3). For 2018 that total benefit paid for this period would be \$5,940.60 (\$990.10 X 6). Subtract the \$1.00 for \$3.00 excess earnings amount from the six-month benefit total (\$5,940.60 - \$2,440) for a total reduction of \$1,379.40. For each month, the reduction is \$229.90 (\$1,379.40/6).

If the benefit rate is \$990.10 (chief beneficiary + 1) per month, for the first six months of 2018, the benefits are subject to a monthly excess earnings reduction of \$229.90. Next, we subtract that amount from the amount for each month (\$990.10 - \$229.90 = \$760.20). So for the first six months of 2018, we pay the miner \$760.20/month instead of the full \$990.10. Starting with the August-for-July payment, we will pay him the full \$990.10 per month, because he reached FRA in July.

g. Monthly Earnings Test. Under the [1977 Amendments to the Social Security Act](#), the *monthly* earnings test was eliminated except for the first year in which a beneficiary has a month of entitlement in which the monthly exempt amount is not earned or substantial service is not performed in self-employment. Each beneficiary is entitled to the use of the monthly earnings test in at least one taxable year after December 31, 1977.

Regardless of total annual, benefits are payable in full for any month in the year in which the beneficiary does not earn more than the monthly exempt amount from wages or does not perform substantial services in self-employment.

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h. Short Taxable Year. A short taxable year may result due to death or attainment of FRA. The earnings test will not apply to any month in which a beneficiary has reached full retirement age. The exempt amount for a short taxable year is calculated by dividing the annual exempt amount by 12 and multiplying the quotient by the number of months, including the terminating event. The month of death will determine the short taxable year for a deceased miner.

Example 1: The annual exempt amount involving beneficiary under the age of 65 in 2018 would be \$17,040. The beneficiary dies in September 2018. To calculate the exempt amount \$17,040 is divided by 12 to equal \$1,420 per month, which is then multiplied by 9 (January through September) to equal \$12,780, which is the annual exempt amount for this short taxable year.

i. Benefits to Which Excess Earnings May Be Charged. Benefits payable cannot be reduced to less than \$0 for any month.

(1) Miner. A miner's excess earnings are charged to the primary benefit and the benefits of all other augmentees entitled on that account.

(2) Parent or Sibling Survivor. A survivor's excess earnings may be charged only against that survivor's own benefits.

(3) Workers' Compensation. Any other offset, e.g., State worker's compensation based on a respiratory disease, which is chargeable against Federal black lung benefits is first offset before reducing benefits due to excess earnings.

(4) Sick Pay. The first six months of sick pay received during the first six months of sick leave is considered as earned wages for offset purposes. Sick pay received in the seventh month and thereafter is not considered as earned wages.

(5) Wages. Money from wages is treated as earnings in the month the money is earned.

(6) Self-Employment. Money from self-employment is treated as earnings in the month it is received.

j. Administering the Earnings Test. A claimant's first contact with the earnings test is usually when an application for benefits is made. For a claimant who may be subject to an excess earnings offset, it is necessary to obtain from the claimant estimated earnings for the current year, and also for the next year if work is continuing. All miners who file a claim for benefits after December 31, 1981, and dependent survivors subject to an excess earnings offset, can have retroactive benefits offset back to date of entitlement.

In addition, the claimant must be made aware that start-work or stop-work changes and changes in estimated earnings should be reported during the year as they occur. NOTE: There is no special form for collecting earnings information from the claimant/beneficiary. Neither

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is there a DIARY ACTION code for this action. Send a letter to the claimant or beneficiary requesting his or her earnings and annotate the file accordingly.

The beneficiary subject to an excess earnings offset should be encouraged to use a high earnings estimate to avoid a benefits overpayment. Earnings estimate can be made more accurate by counting gross wages rather than net wages, multiplying weekly wages by 4 1/3 instead of 4 to obtain monthly wages, and including special payments, such as bonus, vacation, sick or separation pay, in the estimate.

k. Adjustment to the Benefit Record. Benefit Payment Modification Due to Imposing the Excess Earnings Offset. The procedures for completing the CM-1261 and keying data into the Automated System are outlined in PM Chapter 2-1402. Be sure that an "E" is noted under "Reason" on the CM-1261 whenever an excess earnings offset is imposed.

l. Reminder Items Checklist.

- (1) Full Retirement Age. Determine the beneficiary's age to obtain the exempt amount.
- (2) Short Taxable Year. Consider whether or not a short taxable year applies due to age or death.
- (3) First Year Monthly Exempt Rate. Consider the monthly exempt amount for the year FRA is met.
- (4) Self-Employment. Determine if substantial services were rendered for self-employment.
- (5) Worksheet. Calculate the excess earnings offset.
- (6) Benefit Record. Create CM-1261 to adjust the benefit record.
- (7) Document the Record. Upload the information to the imaged record under "Benefit Maintenance"; "Other".
- (8) Control Case for Annual Review. Annotate the file with a reminder to send a letter to the beneficiary at the end of his or her taxable year.