

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

Decision Makers Guide

Volume 14 Amendment 42 – February 2017

1. This letter provides details on Amendment 42; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lq/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 42 affects chapters 85 & 86. The changes
 - Clarify para. 85021, legal footnote added regarding SS Act 92, para. 85037 amended to reflect DMG 86016/17 for consistency and strengthen message around averaging and when to restrict for last two months/ 4 weeks etc. as in para. 86017 (2.1 and 2.2).
 - Meaning in para. 85231 clarified. Para. 85237 added Continuing Care (Scotland), see SI 2016/732 and para.
 - 85455 removed mis-leading reference to 'part of' in 2.2 in DMG Chapter 85. para. 86017 added note to clarify no prescribed period in s2.3 – 'such other...' statement and para.
 - 86211, reference added to Continuing Care, SI 2016/732 in DMG Chapter 86.
4. The last two amendment packages amending Volume 14 were
Amendment 41 [October 2016]
Amendment 40 [June 2016]
5. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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85231 – 85240 (2 pages)

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How much income should be taken into account

85015 The DM should take into account the gross amount of an income. Disregard the sums in DMG 85021 - 85023 and 85200 et seq. when calculating gross income. For SS benefits consider the guidance at DMG 85095. No disregards should be made for any other expenses or deductions.

Note: For guidance on how to calculate a weekly amount see DMG 85030.

Income of the claimant's partner

85016 In a claim for SPC, calculate income of the claimant's partner in the same way as for the claimant¹. The income should then be treated as the claimant's income².

Note: In SPC a member of a couple is referred to as a partner and both members are referred to as partners³.

1 SPC Regs, reg 14; 2 SPC Act 02, s 5; 3 SPC Regs, reg 1(3)

Polygamous marriages

85017 If a claimant or partner **is married** polygamously to two or more members of his household, the income of each of those members should be treated as the claimant's income and should be calculated in the same way¹.

Note: DMG 77115 gives guidance on who may be members of the claimant's household.

1 SPC Regs, Sch III, para 1(4)

Multiple relationships

85018 There is no special rule to cover multiple relationships. If the claimant is

- 1. married to any, but not all** of the other members of the relationship - the DM should treat any unmarried member as a claimant who has no partner. The income of each separate claimant who has no partner should be calculated accordingly
- 2. not married to any** of the members - the DM should treat each member of the relationship as a claimant who has no partner. This is because when a claimant has a relationship similar to marriage with two or more people, none of them can form an unmarried couple. The income of each separate claimant should be calculated accordingly.

Rounding of fractions

85019 Where the calculation of income results in a fraction of a penny, the amount should be rounded to a penny, either up or down, whichever is to the claimant's advantage¹.

Note: If more than one calculation is involved in deciding the amount of an income, each fraction should be rounded to the claimant's advantage.

1 SPC Regs, reg 24A

Payments made in a foreign currency

85020 Where payments are made in a foreign currency, the value of the payment should be calculated by taking the sterling equivalent on the date the payment was made¹.

1 SPC Regs, reg 17(6)

Deductions of income tax and social security contributions

85021 Any tax paid, or due to be paid¹ and National Insurance contributions should be deducted² when calculating any income other than earnings that is to be

1. taken fully into account **or**
2. disregarded in part.

Note: Where the amount of tax due to be paid has been assessed under the HMRC Tax Self Assessment process then DMs should consider revision action if it is shown that there is a tax liability or the actual tax liability differs from the forecast provided by the claimant. DMG Chapter 03 provides guidance on revision.

1 R(IS) 4/05; 2 SPC Regs, reg 17(10); SS CB Act 92; CPC/1970/2015

Example

Sara makes a claim for SPC on 5 June. Her AMG is £109.45.

Sara has been receiving RP of £110.50 since April.

Under the HMRC Tax Self Assessment process Sara calculates her forecast tax liability for HMRC and estimates that she will be liable for £79 tax on this year's RP.

The DM calculates the amount of RP to be taken into account as follows:

£110.50 a week RP being paid less £1.52 a week tax [£79 divided by 52 and rounded up] = £108.98

The DM takes £108.98 RP into account.

Sara is entitled to 47 pence GC a week.

Example

A payment of £100 is made for a period of four weeks. The DM calculates that the weekly amount is £25 ($£100 \times 7 \div 28$).

Averaging of amounts

85037 If the claimant's income fluctuates and has changed more than once, the weekly amount of a claimant's income should be averaged¹. The DM should average on the basis of²

1. the last two payments if those payments are one month or more apart **or**
2. the last four payments, if the last two payments are less than one month apart **or**
3. any other period if it means a more accurate weekly amount can be calculated.

1 SPC Regs, reg 17(2)(b); 2 reg 17(2)(b)(ii)

85038 The last payments¹ for the purposes of DMG 85037 **1** and **2** are the last payments made to the claimant

1. before the date the claim was made or treated as made **or**
2. if there is a later supersession the last payments before the date of the supersession.

1 SPC Regs, reg 17(3)

Example

The claimant is receiving spousal maintenance from her ex-husband under a voluntary agreement. However, the amounts vary each week.

Week 1	£20
Week 2	£15
Week 3	£25
Week 4	£20
Total	= £80

The DM decides to average over the last four payments because the last two payments are less than a month apart. The DM calculates that the weekly amount is £20 ($£80 \div 4$) and this is applied from week 5. Prior to week 5, the DM took the actual amounts received into account.

Period for royalties, copyright payments, lending right payments and occasional payments

85039 The amount of each payment should be treated as if made in respect of a year¹ if the claimant receives

1. royalties or other payments in respect of the use of, or the right to use any
 - 1.1 copyright **or**
 - 1.2 design **or**
 - 1.3 patent **or**
 - 1.4 trade mark **or**
2. any payment in respect of any
 - 2.1 book registered under the Public Lending Right Scheme 1982 **or**
 - 2.2 work made under any international public lending right scheme that is similar to the Public Lending Right Scheme 1982 **or**
3. any payment made on an occasional basis (e.g. an irregular lump sum/ad-hoc payment(s) of spousal maintenance).

1 SPC Regs, reg 17(4) & (5)

Date on which JSA(Cont), MA, ESA(Cont), IB or SDA are treated as paid

85040 Special rules apply to payments of JSA(Cont), MA, ESA(Cont), IB or SDA for which entitlement is calculated on a daily basis. If the claimant receives one of these benefits the DM should treat each day's benefit as paid on the day of the week in respect of which it is payable¹ from.

1 SPC Regs, reg 13B(1)

85041 Any other benefit should be treated as paid¹

1. where the benefit is paid in advance, on the first day of the benefit week in which the benefit is payable from **or**
2. where the benefit is paid in arrears, on the last day of the benefit week in which the benefit is payable from.

1 SPC Regs, reg 13B(2)

Income from boarders

85231 Where claimants provide board and lodging accommodation within their home the DM should

1. add together all the payments made for board and lodge for the week **and**
2. deduct £20 **and**
3. deduct 50% of any excess over £20

for each person for whom board and lodge is provided¹.

Note: In this paragraph “home” means the dwelling occupied as the home.

1 SPC Regs, reg 15(5)(e), Sch IV, para 8

Example

Anita, who claims SPC, had two boarders during the week.

1. Boarder 1 paid £55 for a 4 night stay
2. Boarder 2 paid £12 a night for a five night stay

The DM calculated the income to be taken into account as follows

Boarder 1

Payments for the week	£55
Deduct £20	£20
	£35
Deduct 50% of remainder	£17.50
Income from boarder 1	£17.50

Boarder 2

Payments for the week	£60
Deduct £20	£20
	£40
Deduct 50% of remainder	£20
Income from boarder 1	£20

Total Income

From boarder 1 and boarder 2 £37.50 to be taken into account.

What is board and lodging accommodation

85232 Board and lodging accommodation means¹ accommodation provided for a charge that includes

1. providing the accommodation **and**
2. some cooked or prepared meals.

Note: But not accommodation provided by a close relative or other than on a commercial basis.

1 SPC Regs, reg 1(2); Black and Morgan v Wilkinson [2013] EWCA Civ 820

85233 Any meals provided

1. should not be cooked or prepared by the boarder or member of the boarder's family **and**
2. should be eaten in the accommodation or associated premises¹.

1 SPC Regs, reg 1(2); Black and Morgan v Wilkinson [2013] EWCA Civ 820

Adult Placement/Shared Lives schemes

85234 Adult Placement/Shared Lives schemes allow adults with certain needs to live in the community. The adult is placed with a volunteer carer. In return for providing accommodation and care, the volunteer carer receives payment. This is sometimes referred to as "adult fostering". The schemes are run by LAs or charities.

85235 The payments received for providing care and support do not fall within the meaning of board and lodging accommodation. This is because the payments are primarily for providing care and are not a commercial board and lodging charge. If a person is temporarily in the claimant's care then the payments are also not self-employed earnings¹ (see DMG 86211 4.).

1 SPC Regs, reg 17B(4)(b)

85236 Payments received by the claimant in respect of providing care in an Adult Placement/Shared Lives scheme do not fall to be taken into account as income.

Continuing Care (Scotland)

85237 These provisions¹ place a duty on Local Authorities to provide continuing care to young people who cease to be 'looked after' under relevant legislation. Typically, these young people will be in foster, kinship or residential care. These provisions apply to young people aged 16 and 17 though once in receipt of continuing care they can continue up to the age of 21.

The Children (Scotland) Act 1995, s 26 & s 26A

85238 Where the young person

1. was formerly in the claimant's care **and**
2. is aged 16 or over **and**
3. continues to live with the claimant

Any payments received by the claimant in respect of continuing care will be disregarded¹. These payments also do not fall within the meaning of board and lodging accommodation. This is because the payments are primarily for providing care and are not a commercial board and lodging charge. If a person is temporarily in the claimant's care then the payments are also not self-employed earnings¹ (see DMG 86211 4.).

1 SPC Regs, reg 17B(4)(da)

Income from subletting

85239 Income from sub-letting includes¹ any payment made to the claimant who

1. owns the freehold or leasehold interest in any property or is a tenant of any property **and**
2. occupies part of that property **and**
3. has an agreement with another person allowing that person to occupy that property on payment of rent.

1 SPC Regs, reg 15(5)(i)

85240 Where a claimant sublets part of a property the DM should

1. add together all the payments made for the week **and**
2. deduct £20

for each subtenant who is liable under a contract to pay rent to the claimant¹.

1 SPC Regs, Sch IV, para 9

Example 1

Sally has a subtenant in her home who is liable under a contract to pay her rent. The weekly rent is £50. The subtenant pays £30 on Tuesday and £20 on Saturday. The DM

1. adds together the payments in the week $£30 + £20 = £50$
2. and deducts £20 = £30 income with £20 disregarded.

Example 2

Robin has two subtenants in his property. Both subtenants pay £65 a week. The DM

1. adds together the payments in the week $£65 + £65 = £130$
2. and deducts £20 for each subtenant $£40 = £90$ income with £40 disregarded.

2. has not bought an annuity **and**
 - 2.1 has deferred taking all or part of the income from the fund **or**
 - 2.2 has failed to do everything necessary to get all the income from the fund that would be payable if he applied for it

as having a notional income¹.

1 SPC Regs, reg 18(2)(a)(i) & (ii)

Amount of notional income

85456 [\[See memo DMG 12/15\]](#) The amount of the notional income is the maximum amount of income that may be withdrawn from the fund¹ (see DMG 85465 et seq).

1 SPC Regs, reg 18(3)

From what date should the DM take notional income into account

85457 Take notional income into account from the date that the person could expect to get the income if an application was made¹. To calculate this date

1. assume that an application was made on the date that there is sufficient evidence to show that a notional income should be calculated **and**
2. add the estimated time it would take the pension fund holder to process an application for the maximum amount of income.

1 SPC Regs, reg 18(2)

Example

Bernard receives SPC.

On 1 November the DM receives evidence that Bernard is entitled to a personal pension but has not bought an annuity or drawn an income.

The pension fund holder states that Bernard's scheme can provide an income. In Bernard's case the maximum amount of income, based on the Government's tables, is £23 a week.

Once an application is made it would take the pension fund holder six weeks to arrange for the maximum income to be paid.

The DM decides that Bernard should be treated as having a notional income of £23 a week from 13 December.

Personal pensions/occupational pensions where income withdrawal is not allowed - notional income

85458 Treat a person who has reached qualifying age for SPC (see DMG 77032) who

1. is entitled to money purchase benefits under a personal pension or occupational pension scheme that does not allow income withdrawal **or**

2. has a retirement annuity contract

and has not bought an annuity, as having a notional income¹.

1 SPC Regs, reg 18(2)(a)(iii) & (b)

Amount of notional income

85459 The amount of notional income is the amount that a person could have received without buying an annuity, if the pension funds or retirement annuity contract were held in a scheme that did allow income withdrawal¹ (see DMG 85465 et seq).

1 SPC Regs, reg 18(4)

From what date should the DM take notional income into account

85460 Take notional income into account from the date that a person could expect to get the income if an application was possible¹. To calculate this date

1. assume that an application could be made on the date that there is sufficient evidence to show that a notional income should be calculated **and**
2. add the estimated time it would take a typical pension fund holder who did provide an income from a fund, to process an application for the maximum amount of income.

1 SPC Regs, reg 18(2)

Example

Fiona is an SPC claimant. On 1 November the DM receives evidence that Fiona has a retirement annuity contract.

The pension fund holder provides evidence, based on the Government tables, that Fiona would receive £30 a week if the fund was invested in a pension fund that paid an income.

The DM estimates that it would take six weeks for a typical pension fund holder to arrange for the maximum income to be paid from a fund.

The DM decides that Fiona should be treated as having a notional income of £30 a week from 13 December.

Note: where the notional income rules have been applied and the claimant subsequently takes steps to obtain that income, the guidance at DMG 85460 will no longer apply. The DM should establish the date the claimant begins to take steps to obtain that income and remove the notional income from that date.

Meaning of money purchase benefits

85461 The term money purchase benefits means¹ where pension benefits are determined by the amount of the payment or payments made by or on behalf of the member of the pension scheme rather than average salary benefits.

1 SPC Regs, reg 18(5), PS Act 93, s 181(1)

1. the first day of the benefit week in which the earnings become payable or the amount of the earnings changes, if it is practicable to do so **or**
2. the first day of the benefit week following the payment of the new earnings or new amount of earnings if it is not practicable for them to be taken into account from the day described in 1..

1 SS CS (D&A) Regs, Sch 3B, para 2

Calculating the weekly amount of earnings

86011 Where the period for which a payment of earnings is made is a week or less, the weekly amount will be the amount of the payment¹.

1 SPC Regs, reg 17(1)(a)

86012 Where the payment of earnings is for a month the weekly amount should be worked out by

1. multiplying the amount of the payment by twelve **and**
2. dividing the result by 52¹.

1 SPC Regs, reg 17(1)(b)(i)

86013 Where the payment of earnings is for a period of three months the weekly amount should be worked out by

1. multiplying the amount of the payment by four **and**
2. dividing the result by 52¹.

1 SPC Regs, reg 17(1)(b)(ii)

86014 Where the payment of earnings is for a period of a year the weekly amount should be worked out by dividing the amount of the payment by 52¹.

1 SPC Regs, reg 17(1)(b)(iii)

86015 Where the payment of earnings is for more than a week, and DMG 86011 - 86014 do not apply, the weekly amount should be worked out by

1. multiplying the amount of the payment by seven **and**
2. dividing the result by the number of days in the period for which the payment is made¹.

1 SPC Regs, reg 17(1)(b)(iv)

Averaging of amounts

86016 If the claimant's earnings fluctuate and have changed more than once, or the regular pattern of work means that the claimant does not work the same hours every week, the weekly amount of a claimant's earnings should be averaged¹. The DM should work out the average weekly earnings over

1. where the claimant does not work the same hours every week and there is a recognized cycle of work, over the period of the complete cycle, (including

any periods where the claimant does no work, but not including any other absences) **or**

2. where **1.** does not apply

2.1 the last two payments if those payments are one month or more apart
or

2.2 the last four payments if the last two payments are less than one month apart **or**

2.3 such other payments as may enable a more accurate average weekly amount to be calculated.

1 SPC Regs, reg 17(2)

86017 The last payments for the purposes of DMG 86016 **2.1** and **2.2** are the last payments made to the claimant¹

1. before the date the claim was made or treated as made **or**

2. before a supersession.

Note: for the purpose of calculating an accurate weekly average, the payments in **2.3** are not restricted to any particular period. Any payments that enable a more accurate average weekly amount to be calculated may be used. These could be from before or after the date the claim was made or treated as made, or the last supersession decision, up to the date of the current decision under consideration.

1 SPC Regs, reg 17(3)

86018 A recognizable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle. Where there is a recognizable cycle calculate average hours over one complete cycle. Include, where the cycle involves periods where the person does no work, those periods, but disregard any other absences¹. See [DMG Chapter 20](#) for full guidance on identifying a recognisable cycle but note that SPC does not have the same attribution rules, specifically the “treat as paid” rule, that exist in working age legislation.

A recognizable cycle could include one of the following scenarios (not exhaustive):

Scenario 1

week 1 X hours

week 2 Y hours

week 3 X hours

week 4 X hours

week 5 Y hours

week 6 X hours

There is a recognizable cycle of three weeks (weeks 1 to 3 repeated in weeks 4 to 6).

Scenario 2

month 1 A hours

month 2 B hours

month 3 A hours

month 4 B hours

There is a recognizable cycle of 2 months.

Scenario 3

week 1 X hours

week 2 X hours

week 3 Y hours

week 4 W hours

week 5 V hours

There is no recognizable cycle.

Note: A cycle may include weeks in which no work is done.

1 SPC Regs, reg 17(2)(a)(i)

Example 1

Bernard is in receipt of SPC and works two weeks on and one week off.

In the two weeks he actually works he receives earnings of £80 a week.

In the third week, he receives a retainer of £20.

The DM determines that the earnings should be averaged over a period of three weeks because that is the period of the recognizable cycle of work.

The DM calculates that the average weekly amount of earnings is £60, that is

$$\frac{80 + 80 + 20}{3}$$

and takes that amount into account against Bernard's entitlement.

Example 2

Gillian is in receipt of SPC. She works and has a zero hours contract. This means that for Gillian, her pay fluctuates from week to week but she has been receiving something each week. As a result of this, Gillian's income has been averaged and taken into account when working out her SPC. It was decided to use a period of six weeks to calculate an average because this looked to provide a representative picture of her pay.

Gillian has been told by her employer that although she is still contracted, there will be no work for her for the next 3 weeks. Gillian will not be paid anything by her employer for the next 3 weeks because she is not required to work.

The average figure taken into account for Gillian's SPC is no longer accurate because she actually has no earnings. The amount of earnings to take into account for Gillian's SPC award whilst she is not working is **nil**. Once/if Gillian's work resumes, then a new average can be determined based on the actual earnings paid to her. This will mean taking actual amounts earned into account each week until a new average can be calculated.

Example 3

Stephen is in receipt of SPC and normally works the following:

Week 1 – 12 hours	Week 5 – 12 hours
Week 2 – 6 hours	Week 6 – 6 hours
Week 3 – 6 hours	Week 7 – 6 hours
Week 4 – 12 hours	Week 8 – 12 hours

He is paid weekly based on the hours that he works each week. Therefore for week 1, his pay is 12 hours x the hourly rate for the job, in week 2 his pay is 6 hours x the hourly rate for the job and so on.

There is a recognised cycle of work because there is a pattern of work which repeats itself. The cycle is over 4 weeks.

When taking Stephen's earnings into account, his total earnings paid across the 4 week cycle are added up and then divided by 4. This then provides a weekly figure which falls to be taken into account in his SPC award for as long as he is engaged in this cycle of work.

Example 4

Peter works as a playground supervisor at a school. There is a recognised cycle of work based on the school year. This repeats itself every 12 months. Peter's employment contract provides for the payment of earnings of £200 a week during term-time but he receives nothing during the school holidays. Over the course of the cycle he earns £7,600 (£200 x 38 weeks). This is taken into account as £146.15 per week (£7,600/52 weeks cycle of work). The amount is taken into account in his SPC award for so long as Peter is employed on this contract.

Final payments of income

86019 From 5.4.04 a new rule was introduced¹ to deal with the treatment of final payments of income. This applies where

1. a claimant has been receiving a regular payment of income **and**
2. that payment is coming to an end or has ended **and**
3. the claimant receives a final payment of that income.

1 SPC Regs, reg 17ZA(1)

Earnings of self-employed earners

86210 In the case of S/E earners, earnings means the gross receipts (see DMG 86300) from the employment¹.

1 SPC Regs, reg 17B(4)(a); SS Ben (C of E) Regs, reg 12(1)

86211 S/E earnings do not include¹

1. charges paid to the claimant in return for providing board and lodging accommodation in their own home **or**
2. any payments made by an LA to a claimant for providing children with foster care or Continuing Care (see DMG Chapter 85)² **or**
3. payments made by a voluntary organisation under child care law to prevent children being taken into care³ **or**
4. payments made by an LA, HA, a voluntary organization, a clinical commissioning group, the NHS Commissioning Board, a Local Health Board or the person concerned under specified legislation to a claimant for a person who
 - 4.1 is not normally a member of the claimant's household **and**
 - 4.2 who is temporarily in the claimant's care⁴
5. any sports award⁵.

Note: A sports award is made by one of the Sports Councils named in the National Lottery legislation out of sums allocated to it for distribution under that legislation.

1 SPC Regs, reg 17B(4)(b); SS Ben (C of E) Regs, reg 12; 2 Children Act 1989, s 23(2)(a); Children (Scotland) Act 1995, s 26 & s26A; Looked After Children (Scotland) Regulations 2009, regs 33 & 51; 3 Children Act 1989, s 59(1)(a); 4 NA Act 48, s 26(3A); National Health Service Act 2006, s 14D; NHS Act 77, s 16BA; National Health Service (Wales) Act 2006, s 11; 5 National Lottery etc. Act 1993, s 23(2)

Board and lodging accommodation

86212 Board and lodging accommodation¹ is accommodation

1. where the charge for the accommodation includes some cooked or prepared meals that are both
 - 1.1 cooked or prepared by someone who is not
 - 1.1.a the person provided with accommodation **or**
 - 1.1.b a member of the family of the person provided with accommodation **and**
2. eaten in that accommodation or associated premises.

1 SPC Regs, reg 1(2)

86213 - 86215

Deciding if a person is still a self-employed earner

86216 A S/E earner is someone who is gainfully employed. If a S/E earner is not working, this does not mean that the S/E earner has ceased to be gainfully employed.

86217 To determine if a person is gainfully still employed the DM should consider

1. if there is a reasonable prospect of work in the near future **and**
2. if the business is a going concern and regarded as such by
 - 2.1 the person **or**
 - 2.2 the business's bankers **or**
 - 2.3 any creditors **or**
 - 2.4 others **and**
3. if the person hopes or intends to restart work in the business when economic conditions improve **and**
4. if the person is undertaking any activities in connection with the self-employment **and**
5. if there is work in the pipeline **and**
6. if the person is regarded as S/E by HMRC **and**
7. if the person claims to be anxious for work in the S/E occupation, trade or business. Is the person making it known that the business can take on work?¹. For example,
 - 7.1 by advertising **or**
 - 7.2 by visiting potential customers **and**
8. if the interruption in question is part of the normal pattern of the
 - 8.1 person's work **or**
 - 8.2 work that the person is seeking.

1 Vandyk v. Minister of Pensions & National Insurance [1955] IQ29

86218 All eight factors in DMG 86217 should be considered in **all** cases where a person who has been working as a S/E earner is now without work. This includes

1. people unable to work because of sickness
2. seasonal workers
3. sub-contractors **and**
4. share fishermen.

86219 Some of the factors in DMG 86217 may point towards the fact that a person is gainfully employed. Others may not. No one factor is decisive. The DM should consider the weight to give each relevant factor.