405; Pub. L. 103–296, title I, § 108(k), Aug. 15, 1994, 108 Stat. 1488.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

Prior section 5105 was renumbered section 8305 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 108(k)(1), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

Subsec. (b). Pub. L. 103–296, § 108(k), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places and amended second sentence generally. Prior to amendment, second sentence read as follows: ''A copy of each such application filed with either Secretary, together with any additional information and supporting documents (or certifications thereof) which may have been received by that Secretary with such application, and which may be needed by the other Secretary in connection therewith, shall be transmitted by the Secretary receiving the application to the other Secretary.''

1991—Pub. L. 102–40, § 402(b)(1), renumbered section 3005 of this title as this section.

Subsec. (a). Pub. L. 102–83, § 4(b)(9)(A)–(C), substituted ''(a) The Secretary'' for ''The Administrator'' at the beginning of text and substituted ''401 et seq.).'' for ''401 et seq.); and'' in second sentence.

Subsec. (b). Pub. L. 102–83, § 4(b)(9)(D)–(J), substituted ''(b) When an application on such a form is filed with either the Secretary'' for ''when an application on such form has been filed with either the Administrator'', ''filed with either Secretary'' for ''filed with the Administrator'', ''received by that Secretary'' for ''received by the Administrator'', ''needed by the other Secretary'' for ''needed by the Secretary'', and ''by the Secretary receiving the application to the other Secretary.'' for ''by the Administrator to the Secretary;'', struck out ''and a copy of each such application filed with the Secretary, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary with such form, and which may be needed by the Administrator in connection therewith, shall be transmitted by the Secretary to the Administrator.'' before ''The preceding sentence'', and substituted ''the Secretary and the Secretary of Health and Human Services'' for ''the Secretary and the Administrator''.

1983—Pub. L. 98–160 substituted ''title II of the Social Security Act (42 U.S.C. 401 et seq.)'' for ''subchapter II of chapter 7 of title 42'' wherever appearing.

1982—Pub. L. 97–295 substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

§ 5106. Furnishing of information by other agencies

The head of any Federal department or agency shall provide such information to the Secretary as the Secretary may request for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto. The cost of providing information to the Secretary under this section shall be borne by the department or agency providing the information.

(Added Pub. L. 94–432, title IV, § 403(2), Sept. 30, 1976, 90 Stat. 1372, § 3006; amended Pub. L. 99–576, title VII, § 701(62), Oct. 28, 1986, 100 Stat. 3296; renumbered § 5106, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405; Pub. L. 106–475, § 5, Nov. 9, 2000, 114 Stat. 2099.)

AMENDMENTS

2000—Pub. L. 106–475 inserted at end ''The cost of providing information to the Secretary under this section shall be borne by the department or agency providing the information.''

1991—Pub. L. 102–40 renumbered section 3006 of this title as this section.

Pub. L. 102–83 substituted ''Secretary'' for ''Administrator'' in two places.

1986—Pub. L. 99–576 substituted ''the Administrator'' for ''he'' before ''may request''.

EFFECTIVE DATE

Section effective Sept. 30, 1976, see section 405(a) of Pub. L. 94–432, set out as an Effective Date of 1976 Amendment note under section 1521 of this title.

§ 5107. Claimant responsibility; benefit of the doubt

(a) CLAIMANT RESPONSIBILITY.—Except as otherwise provided by law, a claimant has the responsibility to present and support a claim for benefits under laws administered by the Secretary.

(b) BENEFIT OF THE DOUBT.—The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

(Added Pub. L. 100–687, div. A, title I, § 103(a)(1), Nov. 18, 1988, 102 Stat. 4106, § 3007; renumbered § 5107 and amended Pub. L. 102–40, title IV, § 402(b)(1), (d)(1), May 7, 1991, 105 Stat. 238, 239; Pub. L. 102–83, § 4(a)(1), (3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 403–405; Pub. L. 106–398, § 1 [[div. A], title XVI, § 1611(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–359; Pub. L. 106–419, title I, § 104(c)(2), Nov. 1, 2000, 114 Stat. 1828; Pub. L. 106–475, § 4, Nov. 9, 2000, 114 Stat. 2098.)

AMENDMENTS

2000—Pub. L. 106–475 substituted ''Claimant responsibility; benefit of the doubt'' for ''Burden of proof; benefit of the doubt'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) Except when otherwise provided by the Secretary in accordance with the provisions of this title, a person who submits a claim for benefits under a law administered by the Secretary shall have the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim is well grounded. The Secretary shall assist such a claimant in developing the facts pertinent to the claim. Such assistance shall include requesting information as described in section 5106 of this title.

''(b) When, after consideration of all evidence and material of record in a case before the Department with respect to benefits under laws administered by the Secretary, there is an approximate balance of positive and negative evidence regarding the merits of an issue material to the determination of the matter, the benefit of the doubt in resolving each such issue shall be given to the claimant. Nothing in this subsection shall be construed as shifting from the claimant to the Secretary the burden specified in subsection (a) of this section.''

Pub. L. 106–398, § 1 [[div. A], title XVI, § 1611(a)], directed the general amendment of the section catchline and text. Pub. L. 106–419, § 104(c)(2), provided that, as of the enactment of Pub. L. 106–419, the amendment made by Pub. L. 106–398, § 1 [[div. A], title XVI, § 1611(a)], was deemed for all purposes not to have taken effect and that Pub. L. 106–398, § 1 [[div. A], title XVI, § 1611(a)], ceased to be in effect.

1991—Pub. L. 102–40, § 402(b)(1), renumbered section 3007 of this title as this section.

Subsec. (a). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted ''Secretary'' for ''Administrator'' in two places.

Pub. L. 102–83, § 4(a)(1), substituted ''administered by the Secretary'' for ''administered by the Veterans' Administration''.

Pub. L. 102–40, § 402(d)(1), substituted ''5106'' for ''3006''.

Subsec. (b). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted ''Secretary'' for ''Administrator'' before ''the burden''.

Pub. L. 102–83, § 4(a)(3), (4), substituted ''Department'' for ''Veterans' Administration''.

Pub. L. 102–83, § 4(a)(1), substituted ''administered by the Secretary'' for ''administered by the Veterans' Administration''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–475, § 7, Nov. 9, 2000, 114 Stat. 2099, provided that:

''(a) IN GENERAL.—Except as specifically provided otherwise, the provisions of section 5107 of title 38, United States Code, as amended by section 4 of this Act, apply to any claim—

''(1) filed on or after the date of the enactment of this Act [Nov. 9, 2000]; or

''(2) filed before the date of the enactment of this Act and not final as of that date.

''(b) RULE FOR CLAIMS THE DENIAL OF WHICH BECAME FINAL AFTER THE COURT OF APPEALS FOR VETERANS CLAIMS DECISION IN THE MORTON CASE.—(1) In the case of a claim for benefits denied or dismissed as described in paragraph (2), the Secretary of Veterans Affairs shall, upon the request of the claimant or on the Secretary's own motion, order the claim readjudicated under chapter 51 of such title, as amended by this Act, as if the denial or dismissal had not been made.

''(2) A denial or dismissal described in this paragraph is a denial or dismissal of a claim for a benefit under the laws administered by the Secretary of Veterans Affairs that—

''(A) became final during the period beginning on July 14, 1999, and ending on the date of the enactment of this Act; and

''(B) was issued by the Secretary of Veterans Affairs or a court because the claim was not well grounded (as that term was used in section 5107(a) of title 38, United States Code, as in effect during that period).

''(3) A claim may not be readjudicated under this subsection unless a request for readjudication is filed by the claimant, or a motion is made by the Secretary, not later than 2 years after the date of the enactment of this Act.

''(4) In the absence of a timely request of a claimant under paragraph (3), nothing in this Act [see Short Title of 2000 Amendments note set out under section 101 of this title] shall be construed as establishing a duty on the part of the Secretary of Veterans Affairs to locate and readjudicate a claim described in this subsection.''

EFFECTIVE DATE

Section effective Sept. 1, 1989, see section 401(a) of Pub. L. 100–687, set out as a note under section 7251 of this title.

§ 5108. Reopening disallowed claims

If new and material evidence is presented or secured with respect to a claim which has been disallowed, the Secretary shall reopen the claim and review the former disposition of the claim.

(Added Pub. L. 100–687, div. A, title I, § 103(a)(1), Nov. 18, 1988, 102 Stat. 4107, § 3008; renumbered § 5108, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, § 4(b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102–40 renumbered section 3008 of this title as this section.

Pub. L. 102–83 substituted ''Secretary'' for ''Administrator''.

EFFECTIVE DATE

Section effective Sept. 1, 1989, see section 401(a) of Pub. L. 100–687, set out as a note under section 7251 of this title.

§ 5109. Independent medical opinions

(a) When, in the judgment of the Secretary, expert medical opinion, in addition to that available within the Department, is warranted by the medical complexity or controversy involved in a case being considered by the Department, the Secretary may secure an advisory medical opinion from one or more independent medical experts who are not employees of the Department.

(b) The Secretary shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.

(c) The Secretary shall furnish a claimant with notice that an advisory medical opinion has been requested under this section with respect to the claimant's case and shall furnish the claimant with a copy of such opinion when it is received by the Secretary.

(Added Pub. L. 100–687, div. A, title I, § 103(a)(1), Nov. 18, 1988, 102 Stat. 4107, § 3009; renumbered § 5109, Pub. L. 102–40, title IV, § 402(b)(1), May 7, 1991, 105 Stat. 238; Pub. L. 102–83, § 4(a)(3), (4), (b)(1), (2)(E), Aug. 6, 1991, 105 Stat. 404, 405.)

AMENDMENTS

1991—Pub. L. 102–40 renumbered section 3009 of this title as this section.

Subsec. (a). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted ''Secretary'' for ''Administrator'' in two places.

Pub. L. 102–83, § 4(a)(3), (4), substituted ''Department'' for ''Veterans' Administration'' wherever appearing.

Subsecs. (b), (c). Pub. L. 102–83, § 4(b)(1), (2)(E), substituted ''Secretary'' for ''Administrator'' wherever appearing.

EFFECTIVE DATE

Section effective Sept. 1, 1989, see section 401(a) of Pub. L. 100–687, set out as a note under section 7251 of this title.