

Social Security Administration

§410.686c

prevented him from contacting the Social Security Administration in person or in writing;

(ii) There was a death or serious illness in the individual's family;

(iii) Pertinent records were destroyed by fire or other accidental cause;

(iv) The representative or claimant was furnished incorrect or incomplete information by the Social Security Administration about his right to request review;

(v) The individual failed to receive timely notice of the fee determination;

(vi) The individual transmitted the request to another government agency in good faith within such 30-day period and the request did not reach the Social Security Administration until after such period had expired.

[37 FR 17708, Aug. 30, 1972, as amended at 41 FR 10425, Mar. 11, 1976]

§410.686c Petition for approval of fee.

(a) *Filing of petition.* In accordance with §410.686b, to obtain approval of a fee for services performed before the Social Security Administration in any proceeding under the Act, a representative, upon completion of the proceedings in which he rendered services, must file at an office of the Social Security Administration a written petition which shall contain the following information:

(1) The dates his services began and ended;

(2) An itemization of services rendered by him in a proceeding under the Act, with the amount of time spent in hours, or parts thereof, on each type of service;

(3) The amount of the fee he desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered in the same matter before any State or Federal court;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled him to render valuable services to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the person represented.

(b) *Factors considered in evaluating a petition for fee.* In evaluating a request for approval of a fee, the purpose of the coal miner's benefits program—to provide a measure of economic security for the beneficiaries thereof—will be considered, together with the following factors:

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required in rendition of the services;

(4) The amount of time spent on the case;

(5) The results achieved. (While consideration is always to be given to the amount of benefits, if any, which are payable in a case, the amount of fee will not be based on the amount of such benefits alone but on a consideration of all of the factors listed in this section. The benefits payable in a given claim are governed by specific statutory provisions and by the occurrence of termination, deduction, or non-payment events specified in the law, factors which are unrelated to efforts of the representative. In addition, the amount of accrued benefits payable in a given claim is affected by the length of time that has elapsed since the claimant became entitled to benefits.);

(6) The level of administrative review to which the claim was carried within the Social Security Administration and the level of such review at which the representative entered the proceedings; and

(7) The amount of the fee requested for services rendered, excluding the amount of any expenses incurred, but including any amount previously authorized or requested.

(c) *Time limit for filing petition for approval of attorney fee.* In order for an attorney to receive direct payment of a fee authorized by the Social Security Administration from a claimant's past-due benefits (see §410.686d(b)), the petition for approval of a fee, or written notice of the intent to file a petition, should be filed with the Social Security Administration within 60 days of the date the notice of the determination favorable to the claimant is mailed. Where no such petition is filed within 60 days after the date such notice is mailed, written notice shall be

§410.686d

20 CFR Ch. III (4-1-10 Edition)

sent to the attorney and the claimant, at their last known addresses, that the Social Security Administration will certify for payment to the claimant all the past-due benefits unless the attorney files within 20 days from the date of such notice a written petition for approval of a fee pursuant to paragraphs (a) and (b) of this section, or a written request for an extension of time. The attorney shall send to the claimant a copy of any request for an extension of time. Where the petition is not filed within this time, or by the last day of any extension approved, the Social Security Administration may certify the funds for payment to the claimant. Any fee charged thereafter remains subject to Social Security Administration approval but collection of any such approved fee shall be a matter between the attorney and his client.

[37 FR 17708, Aug. 30, 1972; 37 FR 18525, Sept. 13, 1972, as amended at 41 FR 10425, Mar. 11, 1976]

§410.686d Payment of fees.

(a) *Fees allowed by a Federal court.* Subject to the limitations in §410.686a (b), the Administration shall certify for payment direct to attorneys, out of past-due benefits as defined in §410.686a(c), the amount of fee allowed by a Federal court in a proceeding under part B of title IV of the Act.

(b) *Fees authorized by the Social Security Administration—(1) Attorneys.* Except as provided in §410.686c(c), in any case where the Social Security Administration makes a determination favorable to a claimant who was represented by an attorney as defined in §410.685(a) in a proceeding before the Social Security Administration and as a result of such determination past-due benefits, as defined in §410.686b (c), are payable, the Social Security Administration shall certify for payment to the attorney, out of such benefits, whichever of the following is the smallest:

- (i) Twenty-five percent of the total of such past-due benefits;
 - (ii) The amount of attorney's fee set by the Social Security Administration, or
 - (iii) The amount agreed upon between the attorney and the claimant.
- (2) *Persons other than attorneys.* The Administration assumes no responsi-

bility for the payment of any fee which a representative as defined in §410.685(b) (person other than an attorney) has been authorized to charge in accordance with the provisions of §410.686b and will not deduct such fee from benefits payable under the Act to any beneficiary.

(c) *Responsibility of the Social Security Administration.* The Social Security Administration assumes no responsibility for the payment of a fee based on a revised determination where the request for administrative review was not filed timely. (See paragraph (b) of this section for payment of attorney fees authorized by the Social Security Administration.)

[37 FR 17708, Aug. 30, 1972, as amended at 41 FR 10426, Mar. 11, 1976]

§410.686e Services rendered for an individual in a proceeding before the Administration under part B of title IV of the Act.

Services rendered for an individual in a proceeding before the Administration under part B of title IV of the Act consist of services performed for an individual in connection with any claim before SSA under part B of title IV of the Act, including any services in connection with any asserted right calling for an initial or reconsidered determination by the Administration, and a decision or action by a hearing examiner or by the Appeals Council of the Bureau of Hearings and Appeals of the Administration, whether such determination, decision, or action is rendered before or after remand of a claim by a court. Such services include, but are not limited to, services in connection with a claim for benefits; a request for modification of the amount of benefits; the reinstatement of benefits; proof of support; and proof of employment as a coal miner.

[37 FR 17708, Aug. 30, 1972, as amended at 62 FR 38453, July 18, 1997]

§410.687 Rules governing the representation and advising of claimants and parties.

No attorney or other representative shall:

- (a) With intent to defraud, in any matter willfully and knowingly deceive, mislead, or threaten by word,