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prior eligibility was terminated within the last 60 months because of his work activity) we start paying him provisional benefits beginning February 2010 while we determine whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2008.

(c) We will not pay you a provisional benefit for a month where you are not eligible for a payment under §§ 416.1322, 416.1323, 416.1325, 416.1327, 416.1329, 416.1330, 416.1334, and 416.1339.

(d) We will not pay you a provisional benefit for any month that is after the earliest of either: the month we send you notice of our determination on your request for reinstatement; or, the sixth month following the month you requested expedited reinstatement.

(e) You are not eligible for provisional benefits if—

(1) Prior to starting your provisional benefits we determine that you do not meet the requirements for reinstatement under §§ 416.999a(a); or

(2) We determine that your statements on your request for reinstatement, made under § 416.999b(d)(2), are false.

(f) Determinations we make regarding your provisional benefits under paragraphs (a) through (e) of this section are final and are not subject to administrative and judicial review under subpart N of part 416.

(g) If you were previously overpaid benefits under title II or title XVI of the Act, we will not recover the overpayment from your provisional benefits unless you give us permission.

(h) If we determine you are not eligible to receive reinstated benefits, provisional benefits we have already paid you under this section that were made prior to the termination month under paragraph (d) of this section will not be subject to recovery as an overpayment unless we determine that you knew, or should have known, you did not meet the requirements for reinstatement in § 416.999a. If we inadvertently pay you provisional benefits when you are not entitled to them because we have already made a determination described in paragraph (e) of this section, they

will be subject to recovery as an overpayment under subpart E of part 416.

[70 FR 57144, Sept. 30, 2005]

§ 416.999d How do we determine reinstated benefits?

(a) If you meet the requirements for reinstatement under § 416.999a(a), we will reinstate your benefits with the month after the month you filed your request for reinstatement. We cannot reinstate your eligibility for any month prior to February 2001.

(b) We will compute your reinstated benefit amount and determine benefits payable under the applicable paragraphs in §§ 416.401 through 416.435. We will reduce your reinstated benefit due in a month by a provisional benefit we already paid you for that month. If your provisional benefit paid for a month equals or exceeds the reinstated benefit due, we will treat the difference as an overpayment under § 416.536.

(c) Once you have been reinstated under § 416.999a you cannot be reinstated again until you have completed a 24-month initial reinstatement period. Your initial reinstatement period begins with the month your reinstated benefits begin under paragraph (a) of this section and ends when you have had 24 payable months of reinstated benefits. We consider you to have a payable month for the purposes of this paragraph when you are due a cash benefit of any amount for the month based upon our normal computation and payment rules in § 416.401 through § 416.435 or if you are considered to be receiving SSI benefits in a month under section 1619(b) of the Social Security Act. If your entire benefit payment due you for a month is adjusted for recovery of an overpayment under § 416.570 and § 416.571 or if the amount of the provisional benefit already paid you for a month exceeds the amount of the reinstated benefit payable for that month so that no additional payment is due, we will consider the month a payable month.

(d) Your eligibility for reinstated benefits ends with the month preceding the earliest of the following months—

(1) The month an applicable terminating event in §§ 416.1331 through 416.1339 occurs;

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(2) The third month following the month in which your disability ceases; or

(3) The month in which you die.

(e) Determinations we make under this section are initial determinations under § 416.1402 and are subject to review under subpart N of part 416.

(f) If we determine you are not eligible for reinstated benefits, we will consider your request filed under § 416.999a(a) your intent to claim benefits under § 416.340.

[70 FR 57144, Sept. 30, 2005]

Subpart J—Determinations of Disability

AUTHORITY: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

SOURCE: 46 FR 29211, May 29, 1981, unless otherwise noted.

GENERAL PROVISIONS

§ 416.1001 Purpose and scope.

This subpart describes the standards of performance and administrative requirements and procedures for States making determinations of disability for the Commissioner under title XVI of the Act. It also establishes the Commissioner's responsibilities in carrying out the disability determination function. Subpart I of part 405 of this chapter contains additional rules that the States must follow in making disability and blindness determinations in cases adjudicated under the procedures in part 405 of this chapter.

(a) Sections 416.1001 through 416.1003 describe the purpose of the regulations and the meaning of terms frequently used in the regulations. They also briefly set forth the responsibilities of the Commissioner and the States covered in detail in other sections.

(b) Sections 416.1010 through 416.1018 describe the Commissioner's and the State's responsibilities in performing the disability determination function.

(c) Sections 416.1020 through 416.1033 describe the administrative responsibilities and requirements of the States. The corresponding role of the Commissioner is also set out.

(d) Sections 416.1040 through 416.1050 describe the performance accuracy and processing time standards for measuring State agency performance.

(e) Sections 416.1060 through 416.1061 describe when and what kind of assistance the Commissioner will provide State agencies to help them improve performance.

(f) Sections 416.1070 through 416.1075 describe the level of performance below which the Commissioner will consider a State agency to be substantially failing to make disability determinations consistent with the regulations and other written guidelines and the resulting action the Commissioner will take.

(g) Sections 416.1080 through 416.1083 describe the rules for resolving disputes concerning fiscal issues and providing hearings when we propose to find that a State is in substantial failure.

(h) Sections 416.1090 through 416.1094 describe when and what action the Commissioner will take and what action the State will be expected to take if the Commissioner assumes the disability determination function from a State agency.

[46 FR 29211, May 29, 1981, as amended at 62 FR 38454, July 18, 1997; 71 FR 16461, Mar. 31, 2006]

§ 416.1002 Definitions.

For purposes of this subpart:

Act means the Social Security Act, as amended.

Class or classes of cases means the categories into which disability claims are divided according to their characteristics.

Commissioner means the Commissioner of Social Security or his or her authorized designee.

Determination of disability or disability determination means one or more of the following decisions:

(a) Whether or not a person is under a disability;

(b) The date a person's disability began; or

(c) The date a person's disability ended.

Disability means *disability* or *blindness* as defined in sections 1614(a) (2) and (3) of the Act.

Disability determination function means making determinations as to