

## Social Security Administration

Pt. 405

agency unless the State VR agency appeals that decision in writing in accordance with 45 CFR part 16 to the Department of Health and Human Services' Departmental Appeals Board within 30 days after receiving the Commissioner's decision.

(b) *Disputes on whether there was a continuous period of SGA and whether VR services contributed to a continuous period of SGA.* The rules in paragraph (a) of this section will apply, except that the Commissioner's decision will be final and conclusive. There is no right of appeal to the Departmental Appeals Board.

(c) *Disputes on determinations made by the Commissioner which affect a disability beneficiary's rights to benefits.* Determinations made by the Commissioner which affect an individual's right to benefits (e.g., determinations that disability benefits should be terminated, denied, suspended, continued or begun at a different date than alleged) cannot be appealed by a State VR agency or alternate participant. Because these determinations are an integral part of the disability benefits claims process, they can only be appealed by the beneficiary or applicant whose rights are affected or by his or her authorized representative. However, if an appeal of an unfavorable determination is made by the individual and is successful, the new determination would also apply for purposes of this subpart. While a VR agency or alternate participant cannot appeal a determination made by the Commissioner which affects a beneficiary's or applicant's rights, the VR agency can furnish any evidence it may have which would support a revision of a determination.

[48 FR 6293, Feb. 10, 1983, as amended at 55 FR 8456, Mar. 8, 1990; 62 FR 38452, July 18, 1997]

### **PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS**

#### **Subpart A—Introduction, General Description, and Definitions**

Sec.  
405.1 Introduction.  
405.5 Definitions.

405.10 Medical and Vocational Expert System.

405.20 Good cause for extending deadlines.

405.25 Disqualification of disability adjudicators.

405.30 Discrimination complaints.

APPENDIX TO SUBPART A OF PART 405—CLAIMS THAT WILL BE HANDLED UNDER THE PROCEDURES IN THIS PART

#### **Subpart B—Initial Determinations**

405.101 Disability determinations.

405.105 [Reserved]

405.110 [Reserved]

405.115 Notice of the initial determination.

405.120 Effect of an initial determination.

#### **Subpart C—Review of Initial Determinations by a Federal Reviewing Official**

405.201 Reviewing an initial determination—general.

405.210 How to request review of an initial determination.

405.215 Procedures before a Federal reviewing official.

405.217 Subpoenas.

405.220 Decision by the Federal reviewing official.

405.225 Notice of the Federal reviewing official's decision.

405.230 Effect of the Federal reviewing official's decision.

405.240 Sunset of this subpart.

#### **Subpart D—Administrative Law Judge Hearing**

405.301 Hearing before an administrative law judge—general.

405.305 Availability of a hearing before an administrative law judge.

405.310 How to request a hearing before an administrative law judge.

405.315 Time and place for a hearing before an administrative law judge.

405.316 Notice of a hearing before an administrative law judge.

405.317 Objections.

405.320 Administrative law judge hearing procedures—general.

405.325 Issues before an administrative law judge.

405.330 Prehearing conferences.

405.331 Submitting evidence to an administrative law judge.

405.332 Subpoenas.

405.333 Submitting documents.

405.334 Prehearing statements.

405.340 Deciding a claim without a hearing before an administrative law judge.

405.350 Presenting evidence at a hearing before an administrative law judge.

405.351 Closing statements.

405.360 Official record.

## § 405.1

- 405.365 Consolidated hearing before an administrative law judge.
- 405.366 Posthearing conferences.
- 405.370 Decision by the administrative law judge.
- 405.371 Notice of the decision of an administrative law judge.
- 405.372 Finality of an administrative law judge's decision.
- 405.373 Requesting consideration of new evidence.
- 405.380 Dismissal of a request for a hearing before an administrative law judge.
- 405.381 Notice of dismissal of a request for a hearing before an administrative law judge.
- 405.382 Vacating a dismissal of a request for a hearing before an administrative law judge.
- 405.383 Effect of dismissal of a request for a hearing before an administrative law judge.

### Subpart E—Decision Review Board

- 405.401 Procedures before the Decision Review Board—general.
- 405.405 Decision Review Board.
- 405.410 Selecting claims for Decision Review Board review.
- 405.415 Notification by the Decision Review Board.
- 405.420 Effect of Decision Review Board action on the right to seek judicial review.
- 405.425 Procedures before the Decision Review Board.
- 405.427 Procedures before the Decision Review Board in claims dismissed by an administrative law judge.
- 405.430 Record before the Decision Review Board.
- 405.440 Actions that the Decision Review Board may take.
- 405.445 Notification of the Decision Review Board's action.
- 405.450 Effect of the Decision Review Board's action.

### Subpart F—Judicial Review

- 405.501 Judicial review.
- 405.505 Extension of time to file a civil action.
- 405.510 Claims remanded by a Federal court.
- 405.515 Application of circuit court law.

### Subpart G—Reopening and Revising Determinations and Decisions

- 405.601 Reopening and revising determinations and decisions.

### Subpart H—Expedited Appeals Process for Constitutional Issues

- 405.701 Expedited appeals process—general.
- 405.705 When the expedited appeals process may be used.

## 20 CFR Ch. III (4–1–11 Edition)

- 405.710 How to request an expedited appeal.
- 405.715 Agreement in expedited appeals process.
- 405.720 Notice of agreement to expedite appeal.
- 405.725 Effect of expedited appeals process agreement.

### Subpart I [Reserved]

### Subpart J—Payment of Certain Travel Expenses

- 405.901 Reimbursement of certain travel expenses.

AUTHORITY: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

SOURCE: 71 FR 16446, Mar. 31, 2006, unless otherwise noted.

## Subpart A—Introduction, General Description, and Definitions

### § 405.1 Introduction.

(a) *General.* This part explains our procedures for adjudicating the disability portion of initial claims for entitlement to benefits based on disability under title II of the Social Security Act or for eligibility for supplemental security income payments based on disability or blindness under title XVI of the Act. All adjudicators derive their authority from the Commissioner and have the authority to find facts and, if appropriate, to conduct a fair and impartial hearing in accordance with section 205(b) of the Act.

(b) *Explanation of the administrative review process.* Generally, the administrative review process consists of several steps, which must be requested within certain time periods. The administrative review process steps are:

(1) *Initial determination.* When you claim disability benefits and a period of disability under title II of the Act or eligibility for disability or blindness payments under title XVI of the Act, we will make an initial determination on your claim. See §§ 404.902–903 and 416.1402–1403 of this chapter for a description of what is and what is not an initial determination.

## Social Security Administration

## § 405.5

(2) *Review of initial determination.* If you are dissatisfied with our initial determination, you may request review by a Federal reviewing official.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with a decision made by the Federal reviewing official, you may request a hearing before an administrative law judge. The administrative law judge's decision becomes our final decision, unless your claim is referred to the Decision Review Board.

(4) *Decision Review Board.* When the Decision Review Board reviews your claim and issues a decision, that decision is our final decision.

(5) *Federal court review.* If you are dissatisfied with our final decision as described in paragraphs (b)(3) and (4) of this section, you may request judicial review by filing an action in Federal district court.

(c) *Nature of the administrative review process—(1) Non-adversarial proceeding.* In making a determination or decision on your claim, we conduct the administrative review process in a non-adversarial manner.

(2) *Evidence considered and right to representation.* Subject to the provisions of §§ 405.331 and 405.430, you may present and we will consider information in support of your claim. We also will consider any relevant information that we have in our records. To help you present your claim to us, you may have someone represent you, including an attorney.

(3) *Evidentiary standards applied.* When we make a determination or decision on your disability claim, we will apply a preponderance of the evidence standard, except that the Decision Review Board will review findings of fact under the substantial evidence standard.

(4) *Clarity of determination or decision.* When we adjudicate your claim, the notice of our determination or decision will explain in clear and understandable language the specific reasons for allowing or denying your claim.

(5) *Consequences of failing to timely follow this administrative appeals process.* If you do not seek timely review at the next step required by these procedures, you will lose your right to further administrative review and your right to

judicial review, unless you can show good cause under § 405.20 for your failure to request timely review.

(d) *Expedited appeals process.* You may use the expedited appeals process if you have no dispute with our findings of fact and our application and interpretation of the controlling law, but you believe that a part of that law is unconstitutional. This process permits you to seek our agreement to allow you to go directly to a Federal district court so that the constitutional issue(s) may be resolved.

### § 405.5 Definitions.

As used in this part:

*Act* means the Social Security Act, as amended.

*Administrative appeals judge* means an official, other than an administrative law judge, appointed by the Commissioner to serve on the Decision Review Board.

*Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105 who is employed by the Social Security Administration.

*Board* means Decision Review Board.

*Commissioner* means the Commissioner of Social Security, or his or her designee.

*Date you receive notice* means five days after the date on the notice, unless you show us that you did not receive it within the five-day period.

*Day* means calendar day, unless otherwise indicated.

*Decision* means the decision made by a Federal reviewing official, an administrative law judge, or the Decision Review Board.

*Decision Review Board* means the body comprised of administrative law judges and administrative appeals judges that reviews decisions and dismissal orders by administrative law judges.

*Disability claim or claim* means:

(1) An application for benefits that is based on whether you are disabled under title II of the Act, or

(2) An application for supplemental security income payments that is based on whether you are disabled or blind under title XVI of the Act.

(3) For purposes of this part, the terms "disability claim" or "claim" do

## § 405.10

## 20 CFR Ch. III (4-1-11 Edition)

not include a continuing disability review or age-18 redetermination.

*Document* includes books, records, correspondence, papers, as well as forms of electronic media such as video tapes, CDs, and DVDs.

*Evidence* means evidence as defined under §§ 404.1512 and 416.912 of this chapter.

*Federal reviewing official* means a Federal official who reviews the initial determination.

*Initial determination* means the determination by the State agency.

*Medical expert* means a medical professional who has the qualifications required by the Commissioner and who provides expertise to disability adjudicators at the initial, Federal reviewing official, and administrative law judge levels of the administrative review process.

*Medical and Vocational Expert System* means the body comprised of medical, psychological, and vocational experts, who have qualifications required by the Commissioner. It provides expertise to disability adjudicators at the initial, Federal reviewing official, and administrative law judge levels of the administrative review process.

*Medical and Vocational Expert Unit* means the body within the Medical and Vocational Expert System that is responsible, in part, for overseeing the national network of medical, psychological, and vocational experts.

*National network* means those medical, psychological, and vocational experts, which may include such experts employed by or under contract with the State agencies, who have the qualifications required by the Commissioner and who, under agreement with the Medical and Vocational Expert Unit, may provide advice within their areas of expertise to adjudicators at all levels of the administrative review process.

*Preponderance of the evidence* means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

*Psychological expert* means a psychological professional who has the qualifications required by the Commissioner and who provides expertise to disability adjudicators at the initial, Federal reviewing official, and administra-

tive law judge levels of the administrative review process.

*State agency* means the agency of a State that has been designated by the State to carry out the disability determination function. It also means the Federal disability determination services and agencies that carry out the disability determination function in Puerto Rico, Guam, and the District of Columbia.

*Substantial evidence* means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

*Vacate* means to set aside a previous action.

*Vocational expert* means a vocational professional who has the qualifications required by the Commissioner and who provides expertise to disability adjudicators at the initial, Federal reviewing official, and administrative law judge levels of the administrative review process.

*Waive* means to give up a right knowingly and voluntarily.

*We, us, or our* refers to the Social Security Administration.

*You or your* refers to the person who has filed a disability claim and, where appropriate, his or her authorized representative.

[71 FR 16446, Mar. 31, 2006, as amended at 72 FR 51178, Sept. 6, 2007]

### § 405.10 Medical and Vocational Expert System.

(a) *General.* The Medical and Vocational Expert System is comprised of the Medical and Vocational Expert Unit and a national network of qualified medical, psychological, and vocational experts, which is overseen by the Medical and Vocational Expert Unit. These experts from the national network will assist Federal reviewing officials and administrative law judges in deciding claims. Medical and psychological experts from the national network may assist a State agency in determining disability when the State agency does not have the necessary expertise available to it. The Medical and Vocational Expert Unit also will maintain a national registry of vocational experts having qualifications required

## Social Security Administration

## § 405.20

by the Commissioner who could provide vocational evidence at the initial level.

(b) *Network of medical, psychological, and vocational experts.* From time to time, the Commissioner may establish qualifications that medical, psychological, and vocational experts must meet in order to join the network. Any medical, psychological, or vocational experts meeting those qualifications, including State agency medical or psychological consultants, may become part of the network.

(1) *Use of medical and psychological experts at the State level.* (i) If a State agency requests assistance from us, the Medical and Vocational Expert Unit may assign, to the extent practicable, a network expert to a claim.

(ii) If a State agency is unable to obtain expertise that the Commissioner requires to adjudicate claims involving particular impairments, the Medical and Vocational Expert Unit will assign a network expert to a claim.

(iii) The medical or psychological expert so assigned will serve on the State agency's adjudication team as a medical or psychological consultant and will be deemed qualified as such under §§ 404.1616 and 416.1016 of this chapter.

(2) *Use of network experts at Federal level.* Both Federal reviewing officials and administrative law judges may request evidence from a claimant's treating source, including requesting a treating physician to conduct a consultative examination. However, if they need additional medical, psychological, or vocational documentary or testimonial evidence to adjudicate a claim, they must use the Medical and Vocational Expert System.

(3) *Experts who provide evidence at your request.* Experts whom you ask to provide evidence on your claim are not required to be affiliated with the network or meet the qualifications that we establish.

(c) *National registry of vocational experts.* Vocational experts having the qualifications established by the Commissioner may be included in a registry that we will maintain. The registry will be maintained for and made available to State agencies.

(d) This section will no longer be effective on the same date as described

in § 405.240(c) of this part unless the Commissioner decides that the Medical and Vocational Expert System should be continued and extends the sunset date as described in § 405.240(d) of this part by publishing a notice of proposed rulemaking and a final rule in the FEDERAL REGISTER before that date.

[71 FR 16446, Mar. 31, 2006, as amended at 73 FR 2415, Jan. 15, 2008]

### § 405.20 Good cause for extending deadlines.

(a) If you wish us to extend the deadline to request a review under § 405.210, a hearing under § 405.310, action by the Decision Review Board under § 405.427(a), or judicial review under §§ 405.501–.505, you must establish that there is good cause for missing the deadline. To establish good cause, you must show us that—

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from filing a timely request; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from filing a timely request.

(b) Examples of circumstances that, if documented, may establish good cause include, but are not limited to, the following:

(1) You were seriously ill, and your illness prevented you from contacting us in person, in writing, or through a friend, relative, or other person;

(2) There was a death or serious illness in your immediate family;

(3) Important records were destroyed or damaged by fire or other accidental cause;

(4) You were trying very hard to find necessary information to support your claim but did not find the information within the stated time period;

(5) Within the time limit for requesting further review, you asked us for additional information explaining our action, and within 60 days of receiving the explanation, you requested a review;

(6) We gave you incorrect or incomplete information about when and how to request administrative review or to file a civil suit;

**§ 405.25**

(7) You did not receive notice of the determination or decision; or

(8) You sent the request to another Government agency in good faith within the time limit, and the request did not reach us until after the time period had expired.

**§ 405.25 Disqualification of disability adjudicators.**

Adjudicators at all levels of the administrative review process recognize the need for fair and impartial consideration of the merits of your claim. Any adjudicator who has any personal or financial interest in the matter pending for determination or decision will withdraw from conducting any proceeding with respect to your disability claim. If the adjudicator so withdraws, we will assign your claim to another adjudicator for a determination or decision.

**§ 405.30 Discrimination complaints.**

At all levels of the administrative review process, we do not give inappropriate consideration to your race, color, national origin, age, sex, religion, or nature of your impairment(s). If you believe that an adjudicator has improperly discriminated against you, you may file a discrimination complaint with us. You must file any such complaint within 180 days of the date upon which you became aware that you may have been discriminated against.

**APPENDIX TO SUBPART A OF PART 405—  
CLAIMS THAT WILL BE HANDLED  
UNDER THE PROCEDURES IN THIS  
PART**

(a) We will apply the procedures in this part to disability claims (as defined in § 405.5) filed in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, or Connecticut.

(b) If you move from one State to another after your disability claim has been filed, adjudicators at subsequent levels of review will apply the regulations applicable at the time of such subsequent review in the State where you filed the disability claim.

[73 FR 2415, Jan. 15, 2008]

**20 CFR Ch. III (4–1–11 Edition)**

**Subpart B—Initial Determinations**

**§ 405.101 Disability determinations.**

The State agency will adjudicate your claim using the applicable procedures in subpart Q of part 404 or subpart J of part 416 of this chapter or both and will apply subpart P of part 404 or subpart I of part 416 of this chapter or both. The disability examiner will make a determination based on all of the evidence. The written determination will explain in clear and understandable language the specific reasons for and the effect of the initial determination. It will also inform you of your right to review by a Federal reviewing official and your right to representation.

[71 FR 16446, Mar. 31, 2006, as amended at 72 FR 51178, Sept. 6, 2007]

**§ 405.105 [Reserved]**

**§ 405.110 [Reserved]**

**§ 405.115 Notice of the initial determination.**

We will mail a written notice of our initial determination to you at your last known address. The written notice will explain in simple and clear language what we have determined and the reasons for and the effect of our determination. If our determination involves a determination of disability that is in whole or in part unfavorable to you, our written notice also will contain in understandable language a statement of the case setting forth the evidence on which our determination is based. The notice also will inform you of your right to review by a Federal reviewing official and explain your right to representation. We will not mail a notice if the beneficiary's entitlement to benefits has ended because of his or her death.

[72 FR 51178, Sept. 6, 2007]

**§ 405.120 Effect of an initial determination.**

An initial determination is binding unless—

(a) You request review by a Federal reviewing official within the 60-day time period stated in § 405.210 of this part, or

## Social Security Administration

## § 405.217

(b) We revise the initial determination under subpart G of this part.

### Subpart C—Review of Initial Determinations by a Federal Reviewing Official

#### § 405.201 Reviewing an initial determination—general.

If you are dissatisfied with the initial determination on your disability claim, you may request review by a Federal reviewing official.

#### § 405.210 How to request review of an initial determination.

(a) *Written request.* You must request review by filing a written request. You should include in your request—

(1) Your name and social security number,

(2) If you have filed a claim for benefits based on disability under title II of the Act under an account other than your own, the name and social security number of the wage earner under whose account you are filing,

(3) The reasons you disagree with the initial determination on your disability claim,

(4) Additional evidence that you have available to you, and

(5) The name and address of your representative, if any.

(b) *Time limit for filing request.* We will review an initial determination if you request review in writing no later than 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (d) of this section).

(c) *Place for filing request.* You should submit a written request for review at one of our offices. If your disability claim is under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service, or at least five years of service accruing after December 31, 1995, in the railroad industry, an office of the Railroad Retirement Board.

(d) *Extension of time to request review.* If you want us to review the initial determination on your disability claim, but you do not request review timely, you may ask us for more time to re-

quest review. Your request for an extension of time must be in writing and must give the reasons the request for review was not filed, or cannot be filed, in time. If you show us that you have good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we will use the standards explained in § 405.20 of this part.

#### § 405.215 Procedures before a Federal reviewing official.

(a) *General.* The Federal reviewing official will review existing evidence and accept and obtain new evidence in order to make a decision on your claim. The decision will be based on all evidence in the record.

(b) *Developing the record.* If you have additional evidence that you did not submit with your request for review, you should submit that evidence to the Federal reviewing official as soon as possible. If there is additional evidence that you wish to submit and you are having difficulty obtaining it, the Federal reviewing official may issue a subpoena for the evidence using the process and standards described in § 405.217. If the Federal reviewing official determines that additional evidence is necessary, we may obtain such evidence from other sources, including the State agency.

(c) *Seeking State agency clarification.* In reviewing your claim, if the Federal reviewing official determines that additional information, beyond that provided by the claimant, is necessary, the Federal reviewing official may obtain it from other sources, including the State agency or a treating source. The State agency will provide such clarification or additional information to the Federal reviewing official on a timely basis. In such circumstances, the Federal reviewing official will retain the authority to make the decision as to whether or not you are disabled.

#### § 405.217 Subpoenas.

(a) When it is reasonably necessary for the full presentation of a claim, we may issue subpoenas for the production of any documents that are relevant to an issue before the Federal reviewing official.

**§ 405.220**

(b) To have documents subpoenaed, you must file a written request for a subpoena with us.

The written request must:

(1) Identify the documents with sufficient detail to find them;

(2) State the important facts that the document is expected to show; and

(3) Indicate why these facts could not be shown without that document.

(c) We will pay the cost of issuing the subpoena.

(d) Within five days of receipt of a subpoena, the person against whom the subpoena is directed may ask us to withdraw or limit the scope of the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope.

(e) Upon failure of any person to comply with a subpoena, the Office of the General Counsel may seek enforcement of the subpoena under section 205(e) of the Act.

**§ 405.220 Decision by the Federal reviewing official.**

(a) The Federal reviewing official will make a decision based on all of the evidence. The written decision will explain in clear and understandable language the specific reasons for the decision, including an explanation as to why the Federal reviewing official agrees or disagrees with the rationale in the initial determination.

(b) Before making his or her decision, the Federal reviewing official may consult with a medical, psychological, or vocational expert through the Medical and Vocational Expert System if the Federal reviewing official determines that such consultation is necessary. If the Federal reviewing official disagrees with the initial determination, or if you submit, or the Federal reviewing official otherwise obtains, new and material medical evidence, the Federal reviewing official will consult with a medical or psychological expert through the Medical and Vocational Expert System before making a decision. At all times, the Federal reviewing official retains the authority to make the decision as to whether you are disabled under our rules.

**20 CFR Ch. III (4-1-11 Edition)**

**§ 405.225 Notice of the Federal reviewing official's decision.**

We will mail a written notice of the Federal reviewing official's decision to you at your last known address. We will inform you of your right to a hearing before an administrative law judge.

**§ 405.230 Effect of the Federal reviewing official's decision.**

The Federal reviewing official's decision is binding unless—

(a) You request a hearing before an administrative law judge under § 405.310 of this part within 60 days of the date you receive notice of the Federal reviewing official's decision and a decision is made by the administrative law judge.

(b) The expedited appeals process is used, or

(c) We revise the Federal reviewing official's decision under subpart G of this part.

**§ 405.240 Sunset of this subpart.**

(a) If you filed a request for review by a Federal reviewing official and we transferred your claim to the Office of the Federal Reviewing Official on or before March 23, 2008, the Federal reviewing official will review and issue a decision on your claim.

(b) If you have received an initial determination under subpart B of this part, we will process any request for additional administrative review not described in paragraph (a) of this section as either a request for reconsideration by the State agency or a request for hearing before an administrative law judge if your State uses the testing procedures under §§ 404.906 and 416.1406 of this chapter. In any hearing before an administrative law judge on your claim, and in any further review of your claim, we will follow the procedures in this part.

(c) This subpart will no longer be effective the day after a Federal reviewing official issues a decision on the last of the claims accepted for review under paragraph (a) of this section.

(d) If compelling evidence shows that the Federal reviewing official process is efficient, effective, and sustainable given available Agency resources, the

## Social Security Administration

## § 405.310

Commissioner may reinstate the Federal reviewing official process by publishing a notice of proposed rule-making and final rule in the FEDERAL REGISTER.

[73 FR 2415, Jan. 15, 2008; 73 FR 10381, Feb. 27, 2008]

### Subpart D—Administrative Law Judge Hearing

#### § 405.301 Hearing before an administrative law judge—general.

(a) This subpart explains what to do if you are dissatisfied with a decision by a Federal reviewing official, a reconsidered determination you received as a result of § 405.240 of this part, or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter. In it, we describe how you may ask for a hearing before an administrative law judge, and what procedures we will follow when you ask for a hearing.

(b) The Commissioner will appoint an administrative law judge to conduct the hearing. If circumstances warrant after making the appointment (for example, if the administrative law judge becomes unavailable), the Commissioner may assign your claim to another administrative law judge.

(c) You may examine the evidence used in making the decision or determination under review, submit evidence, appear at the hearing, and present and question witnesses. The administrative law judge may ask you questions and will issue a decision based on the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the evidence that is in the file, any new evidence that is timely submitted, and any evidence that the administrative law judge obtains.

[71 FR 16446, Mar. 31, 2006, as amended at 73 FR 2415, Jan. 15, 2008]

#### § 405.305 Availability of a hearing before an administrative law judge.

You may request a hearing before an administrative law judge if you are dissatisfied with the Federal reviewing of-

official's decision on your disability claim, the reconsidered determination you received as a result of § 405.240 of this part, or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter.

[73 FR 2415, Jan. 15, 2008]

#### § 405.310 How to request a hearing before an administrative law judge.

(a) *Written request.* You must request a hearing by filing a written request. You should include in your request—

(1) Your name and social security number,

(2) If you have filed a claim for benefits based on disability under title II of the Act under an account other than your own, the name and social security number of the wage earner under whose account you are filing,

(3) The specific reasons you disagree with the decision made by the Federal reviewing official,

(4) A statement of the medically determinable impairment(s) that you believe prevents you from working,

(5) Additional evidence that you have available to you, and

(6) The name and address of your representative, if any.

(b) *Time limit for filing request.* An administrative law judge will conduct a hearing if you request one in writing no later than 60 days after the date you receive notice of the Federal reviewing official's decision, the reconsidered determination you received as a result of § 405.240 of this part, or the initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter (or within the extended time period if we extend the time as provided in paragraph (d) of this section). The administrative law judge may decide your disability claim without an oral hearing under the circumstances described in § 405.340.

(c) *Place for filing request.* You should submit a written request for a hearing at one of our offices. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10

## § 405.315

or more years of service, or at least five years of service accruing after December 31, 1995, in the railroad industry, an office of the Railroad Retirement Board.

(d) *Extension of time to request a hearing.* If you want a hearing before an administrative law judge, but you do not request it timely, you may ask us for more time to request a hearing. Your request for an extension of time must be in writing and must give the reasons the request for review was not filed, or cannot be filed, in time. If you show us that you have good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 405.20 of this part.

(e) *Waiver of the right to appear.* After you submit your request for a hearing, you may ask the administrative law judge to decide your claim without a hearing, as described in § 405.340(b). The administrative law judge may grant the request unless he or she believes that a hearing is necessary. You may withdraw this waiver of your right to appear at a hearing any time before notice of the hearing decision is mailed to you, and we will schedule a hearing as soon as practicable.

[71 FR 16446, Mar. 31, 2006, as amended at 73 FR 2415, Jan. 15, 2008]

## § 405.315 Time and place for a hearing before an administrative law judge.

(a) *General.* The administrative law judge sets the time and place for the hearing. The administrative law judge will notify you of the time and place of the hearing at least 75 days before the date of the hearing, unless you agree to a shorter notice period. If it is necessary, the administrative law judge may change the time and place of the hearing. If the administrative law judge changes the time and place of the hearing, he or she will send you reasonable notice of the change.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(c) *Determination regarding in-person or video teleconference appearance of witnesses at the hearing.* In setting the

## 20 CFR Ch. III (4–1–11 Edition)

time and place of the hearing, the administrative law judge will determine whether you or any other person will appear at the hearing in person or by video teleconferencing. If you object to appearing personally by video teleconferencing, we will re-schedule the hearing to a time and place at which you may appear in person before the administrative law judge. If you object to any other person appearing by video teleconferencing, the administrative law judge will decide whether to have that person appear in person or by video teleconference. Section 405.350 explains how you and witnesses appear and present evidence at hearings. Except when you object to appearing by video teleconferencing as described below, the administrative law judge will direct that a person's appearance will be conducted by video teleconferencing when:

(1) Video teleconferencing technology is available,

(2) Use of video teleconferencing technology would be more efficient than conducting an examination of a witness in person, and

(3) The administrative law judge does not determine that there is another reason why video teleconferencing should not be used.

## § 405.316 Notice of a hearing before an administrative law judge.

(a) *Issuing the notice.* After the administrative law judge sets the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service. We will mail or serve the notice at least 75 days before the date of the hearing, unless you agree to a shorter notice period.

(b) *Notice information.* The notice of hearing will tell you:

(1) The specific issues to be decided,

(2) That you may designate a person to represent you during the proceedings,

(3) How to request that we change the time or place of your hearing,

(4) That your hearing request may be dismissed if you fail to appear at your scheduled hearing without good reason under § 405.20,

## Social Security Administration

## § 405.325

(5) Whether your or a witness's appearance will be by video teleconferencing, and

(6) That you must submit all evidence that you wish to have considered at the hearing no later than five business days before the date of the scheduled hearing, unless you show that your circumstances meet the conditions described in §405.331 for missing the deadline.

(c) *Acknowledging the notice of hearing.* In the notice of hearing, we will ask you to return a form to let us know that you received the notice. If you or your representative do(es) not acknowledge receipt of the notice of hearing, we will attempt to contact you to see if you received it. If you let us know that you did not receive the notice of hearing, we will send you an amended notice by certified mail.

### § 405.317 Objections.

(a) *Time and place.* (1) If you object to the time or place of your hearing, you must notify the administrative law judge in writing at the earliest possible opportunity before the date set for the hearing, but no later than 30 days after receiving notice of the hearing. You must state the reason(s) for your objection and propose a time and place you want the hearing to be held.

(2) The administrative law judge will consider your reason(s) for requesting the change and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether we previously granted to you any changes in the time or place of your hearing.

(b) *Issues.* If you believe that the issues contained in the hearing notice are incorrect, you should notify the administrative law judge in writing at the earliest possible opportunity, but must notify him or her no later than five business days before the date set for the hearing. You must state the reason(s) for your objection. The administrative law judge will make a decision on your objection either at the

hearing or in writing before the hearing.

### § 405.320 Administrative law judge hearing procedures—general.

(a) *General.* A hearing is open only to you and to other persons the administrative law judge considers necessary and proper. The administrative law judge will conduct the proceedings in an orderly and efficient manner. At the hearing, the administrative law judge will look fully into all of the issues raised by your claim, will question you and the other witnesses, and will accept any evidence relating to your claim that you submit in accordance with §405.331.

(b) *Conduct of the hearing.* The administrative law judge will decide the order in which the evidence will be presented. The administrative law judge may stop the hearing temporarily and continue it at a later date if he or she decides that there is evidence missing from the record that must be obtained before the hearing may continue. At any time before the notice of the decision is sent to you, the administrative law judge may hold a supplemental hearing in order to receive additional evidence, consistent with the procedures described below. If an administrative law judge requires testimony or other evidence from a medical, psychological, or vocational expert in your claim, the Medical and Vocational Expert Unit (see §405.10 of this part) will provide an appropriate expert who has not had any prior involvement in your claim.

### § 405.325 Issues before an administrative law judge.

(a) *General.* The issues before the administrative law judge include all the issues raised by your claim, regardless of whether or not the issues may have already been decided in your favor.

(b) *New issues.* Any time after receiving the hearing request and before mailing notice of the hearing decision, the administrative law judge may consider a new issue if he or she, before deciding the issue, provides you an opportunity to address it. The administrative law judge or any party may raise a new issue; an issue may be raised even though it arose after the request

### § 405.330

for a hearing and even though it has not been considered in an initial or reconsidered determination.

(c) *Collateral estoppel—issues previously decided.* In one of our previous and final determinations or decisions involving you, but arising under a different title of the Act or under the Federal Coal Mine Health and Safety Act, we already may have decided a fact that is an issue before the administrative law judge. If this happens, the administrative law judge will not consider the issue again, but will accept the factual finding made in the previous determination or decision, unless he or she has reason to believe that it was wrong, or reopens the previous determination or decision under subpart G of this part.

### § 405.330 Prehearing conferences.

(a)(1) The administrative law judge, on his or her own initiative or at your request, may decide to conduct a prehearing conference if he or she finds that such a conference would facilitate the hearing or the decision on your claim. A prehearing conference normally will be held by telephone, unless the administrative law judge decides that conducting it in another manner would be more efficient and effective in addressing the issues raised at the conference. We will give you reasonable notice of the time, place, and manner of the conference.

(2) At the conference, the administrative law judge may consider matters such as simplifying or amending the issues, obtaining and submitting evidence, and any other matters that may expedite the hearing.

(b) The administrative law judge will have a record of the prehearing conference made.

(c) We will summarize in writing the actions taken as a result of the conference, unless the administrative law judge makes a statement on the record at the hearing summarizing them.

(d) If neither you nor the person you designate to act as your representative appears at the prehearing conference, and under § 405.380(b), you do not have a good reason for failing to appear, we may dismiss the hearing request.

### 20 CFR Ch. III (4–1–11 Edition)

### § 405.331 Submitting evidence to an administrative law judge.

(a) You should submit with your request for hearing any evidence that you have available to you. Any written evidence that you wish to be considered at the hearing must be submitted no later than five business days before the date of the scheduled hearing. If you do not comply with this requirement, the administrative law judge may decline to consider the evidence unless the circumstances described in paragraphs (b) or (c) of this section apply.

(b) If you miss the deadline described in paragraph (a) of this section and you wish to submit evidence during the five business days before the hearing or at the hearing, the administrative law judge will accept the evidence if you show that:

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(c) If you miss the deadline described in paragraph (a) of this section and you wish to submit evidence after the hearing and before the hearing decision is issued, the administrative law judge will accept the evidence if you show that there is a reasonable possibility that the evidence, alone or when considered with the other evidence of record, would affect the outcome of your claim, and:

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

### § 405.332 Subpoenas.

(a) When it is reasonably necessary for the full presentation of a claim, an administrative law judge may, on his or her own initiative or at your request, issue subpoenas for the appearance and testimony of witnesses and

for the production of any documents that are relevant to an issue at the hearing.

(b) To have documents or witnesses subpoenaed, you must file a written request for a subpoena with the administrative law judge at least 10 days before the hearing date. The written request must:

- (1) Give the names of the witnesses or documents to be produced;
- (2) Describe the address or location of the witnesses or documents with sufficient detail to find them;
- (3) State the important facts that the witness or document is expected to show; and
- (4) Indicate why these facts could not be shown without that witness or document.

(c) We will pay the cost of issuing the subpoena and pay subpoenaed witnesses the same fees and mileage they would receive if they had been subpoenaed by a Federal district court.

(d) Within five days of receipt of a subpoena, but no later than the date of the hearing, the person against whom the subpoena is directed may ask the administrative law judge to withdraw or limit the scope of the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope.

(e) Upon failure of any person to comply with a subpoena, the Office of the General Counsel may seek enforcement of the subpoena under section 205(e) of the Act.

#### § 405.333 Submitting documents.

All documents prepared and submitted by you, *i.e.*, not including medical or other evidence that is prepared by persons other than the claimant or his or her representative, should clearly designate the name of the claimant and the last four digits of the claimant's social security number. All such documents must be clear and legible to the fullest extent practicable and delivered or mailed to the administrative law judge within the time frames that he or she prescribes. Documents that are typewritten or produced with word processing software must use type face no smaller than 12 point font.

#### § 405.334 Prehearing statements.

(a) At any time before the hearing begins, you may submit, or the administrative law judge may request that you submit, a prehearing statement as to why you are disabled.

(b) Unless otherwise requested by the administrative law judge, a prehearing statement should discuss briefly the following matters:

- (1) Issues involved in the proceeding,
- (2) Facts,
- (3) Witnesses,
- (4) The evidentiary and legal basis upon which your disability claim can be approved, and
- (5) Any other comments, suggestions, or information that might assist the administrative law judge in preparing for the hearing.

#### § 405.340 Deciding a claim without a hearing before an administrative law judge.

(a) *Decision fully favorable.* If the evidence in the record supports a decision fully in your favor, the administrative law judge may issue a decision without holding a hearing. However, the notice of the decision will inform you that you have the right to a hearing and that you have a right to examine the evidence on which the decision is based.

(b) *You do not wish to appear.* The administrative law judge may decide a claim on the record and not conduct a hearing if—

- (1) You state in writing that you do not wish to appear at a hearing, or
- (2) You live outside the United States and you do not inform us that you want to appear.

(c) When a hearing is not held, the administrative law judge will make a record of the evidence, which, except for the transcript of the hearing, will contain the material described in § 405.360. The decision of the administrative law judge must be based on this record.

[71 FR 16446, Mar. 31, 2006, as amended at 75 FR 33168, June 11, 2010]

**§ 405.350 Presenting evidence at a hearing before an administrative law judge.**

(a) *The right to appear and present evidence.* You have a right to appear before the administrative law judge, either in person or, when the administrative law judge determines that the conditions in § 405.315(c) exist, by video teleconferencing, to present evidence and to state your position. You also may appear by means of a designated representative.

(b) *Admissible evidence.* The administrative law judge may receive any evidence at the hearing that he or she believes relates to your claim.

(c) *Witnesses at a hearing.* Witnesses who appear at a hearing shall testify under oath or by affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or making an affirmation. The administrative law judge, you, or your representative may ask the witnesses any questions relating to your claim.

**§ 405.351 Closing statements.**

You or your representative may present a closing statement to the administrative law judge—

(a) Orally at the end of the hearing,

(b) In writing after the hearing and within a reasonable time period set by the administrative law judge, or

(c) By using both methods under paragraphs (a) and (b).

**§ 405.360 Official record.**

All hearings will be recorded. All evidence upon which the administrative law judge relies for the decision must be contained in the record, either directly or by appropriate reference. The official record will include the applications, written statements, certificates, reports, affidavits, medical records, and other documents that were used in making the decision under review and any additional evidence or written statements that the administrative law judge admits into the record under §§ 405.320(a) and 405.331. All exhibits introduced as evidence must be marked for identification and incorporated into the record. The official record of your claim will contain all of the marked exhibits and a verbatim recording of all

testimony offered at the hearing; it also will include any prior initial determinations or decisions on your claim. Subject to § 405.373, the official record closes once the administrative law judge issues his or her decision regardless of whether it becomes our final decision.

**§ 405.365 Consolidated hearing before an administrative law judge.**

(a) *General.* (1) We may hold a consolidated hearing if—

(i) You have requested a hearing to decide your disability claim, and

(ii) One or more of the issues to be considered at your hearing is the same as an issue involved in another claim you have pending before us.

(2) If the administrative law judge consolidates the claims, he or she will decide both claims, even if we have not yet made an initial determination or a Federal reviewing official decision on the other claim.

(b) *Record, evidence, and decision.* There will be a single record at a consolidated hearing. This means that the evidence introduced at the hearing becomes the evidence of record in each claim adjudicated. The administrative law judge may issue either a consolidated decision or separate decisions for each claim.

**§ 405.366 Posthearing conferences.**

(a) The administrative law judge may decide, on his or her own initiative or at your request, to hold a posthearing conference to facilitate the hearing decision. A posthearing conference normally will be held by telephone unless the administrative law judge decides that conducting it in another manner would be more efficient and effective in addressing the issues raised. We will give you reasonable notice of the time, place, and manner of the conference. A record of the conference will be made and placed in the hearing record.

(b) If neither you nor the person you designate to act as your representative appears at the posthearing conference, and under § 405.380(b), you do not have a good reason for failing to appear, we will issue a decision based on the information available in your claim.

**§ 405.370 Decision by the administrative law judge.**

(a) The administrative law judge will make a decision based on all of the evidence, including the testimony adduced at the hearing. The administrative law judge will prepare a written decision that explains in clear and understandable language the specific reasons for the decision. While the administrative law judge will not consider the Federal reviewing official's decision to be evidence, the written decision will explain in detail why the administrative law judge agrees or disagrees with the substantive findings and overall rationale of the decision.

(b) During the hearing, in certain categories of claims that we identify in advance, the administrative law judge may orally explain in clear and understandable language the specific reasons for, and enter into the record, a fully favorable decision. The administrative law judge will include in the record a document that sets forth the key data, findings of fact, and narrative rationale for the decision. Within five days after the hearing, if there are no subsequent changes to the analysis in the oral decision, we will send you a written decision that incorporates such oral decision by reference and that explains why the administrative law judge agrees or disagrees with the substantive findings and overall rationale of the Federal reviewing official's decision. If there is a change in the administrative law judge's analysis or decision, we will send you a written decision that is consistent with paragraph (a) of this section. Upon written request, we will provide you a record of the oral decision.

[71 FR 16446, Mar. 31, 2006, as amended at 75 FR 33168, June 11, 2010]

**§ 405.371 Notice of the decision of an administrative law judge.**

We will send a notice and the administrative law judge's decision to you at your last known address. The notice accompanying the decision will inform you whether or not the decision is our final decision, and will explain your right to representation. If it is not our final decision, the notice will explain that the Decision Review Board has taken review of your claim.

**§ 405.372 Finality of an administrative law judge's decision.**

The decision of the administrative law judge becomes our final decision and is binding on you unless—

(a) The Decision Review Board reviews your claim,

(b) An administrative law judge or the Decision Review Board revises the decision under subpart G of this part,

(c) A Federal court reverses the decision or remands it for further administrative action, or

(d) The administrative law judge considers new evidence under § 405.373.

**§ 405.373 Requesting consideration of new evidence.**

(a) If the administrative law judge's decision is our final decision, the administrative law judge will consider new evidence submitted after the issuance of the decision if your claim has not been referred to the Decision Review Board. To obtain such consideration by the administrative law judge at the earliest possible opportunity, but no later than 30 days after the date you receive notice of the decision.

(b) The administrative law judge will accept the evidence if you show that there is a reasonable probability that the evidence, alone or when considered with the other evidence of record, would change the outcome of the decision, and:

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(c)(1) The administrative law judge will notify you within 10 days whether or not he or she will reconsider the final decision.

(2) If the administrative law judge declines to reconsider his or her decision, the decision remains final. If you choose to seek judicial review, you must file in Federal court within the 60-day period beginning with the date you originally received the final decision.

## § 405.380

(3) If the administrative law judge agrees to reconsider his or her decision based on the new evidence, the final decision is vacated and not subject to judicial review. After considering the new evidence, the administrative law judge will take appropriate action, including rendering a decision under § 405.370, and we will send you notice of the decision under § 405.371.

(d) If the administrative law judge's decision is not our final decision, you must submit your evidence to the Decision Review Board, and the Board will consider it if you make the showings required in paragraph (b) of this section.

### **§ 405.380 Dismissal of a request for a hearing before an administrative law judge.**

An administrative law judge may dismiss a request for a hearing:

(a) At any time before notice of the hearing decision is mailed, when you withdraw the request orally on the record at the hearing or in writing;

(b)(1) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we previously notified you that your request for hearing may be dismissed if you did not appear, and you do not give a good reason for failing to appear; or

(2) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we had not previously notified you that your request for hearing may be dismissed if you did not appear, and within 10 days after we send you a notice asking why you did not appear, you do not give a good reason for failing to appear.

(3) In determining whether you had a good reason under this paragraph, we will consider the factors described in § 405.20(a) of this part;

(c) If the doctrine of res judicata applies because we have made a previous determination or decision on your disability claim on the same facts and on the same issue or issues, and this previous determination or decision has become final;

(d) If you have no right to a hearing under § 405.305;

## 20 CFR Ch. III (4-1-11 Edition)

(e) If you did not request a hearing in time and we have not extended the time for requesting a hearing; or

(f) If you die and your estate or any person to whom an underpayment may be distributed under §§ 404.503 or 416.542 of this chapter has not pursued your claim.

### **§ 405.381 Notice of dismissal of a request for a hearing before an administrative law judge.**

We will mail a written notice of the dismissal of the hearing request to you at your last known address. The notice will tell you that you may ask the administrative law judge to vacate the dismissal (see § 405.382), and will explain your right to representation. The notice will also tell you that you may ask the Decision Review Board to review the dismissal if the administrative law judge does not vacate it.

### **§ 405.382 Vacating a dismissal of a request for a hearing before an administrative law judge.**

If you ask in writing within 30 days after the date you receive the notice of dismissal, an administrative law judge may vacate a dismissal of a hearing request. The administrative law judge will vacate the dismissal if he or she finds that it was erroneous. We will notify you of whether the administrative law judge granted or denied your request.

### **§ 405.383 Effect of dismissal of a request for a hearing before an administrative law judge.**

The administrative law judge's dismissal of a request for a hearing is binding and not subject to further review, unless it is vacated by the administrative law judge under § 405.382 or by the Decision Review Board under § 405.427 of this part.

## **Subpart E—Decision Review Board**

### **§ 405.401 Procedures before the Decision Review Board—general.**

(a) This subpart describes the Decision Review Board and explains the

## Social Security Administration

## § 405.420

Board's procedures for reviewing administrative law judge decisions. It explains which claims the Board will review and the effects of that review on your claim.

(b) This subpart also describes how the Board may review the administrative law judge's dismissal of your hearing request and sets out the procedures that we use when you request that the Board vacate the administrative law judge's dismissal order.

### § 405.405 Decision Review Board.

(a) The Board is comprised of administrative law judges and administrative appeals judges, who are appointed to the Board by the Commissioner. It is responsible for evaluating and reviewing certain decisions made by administrative law judges under this part before the decisions are effectuated.

(b) As described in § 405.410, the Board will review administrative law judge decisions. You may not appeal an administrative law judge's decision to the Board. The Board may affirm, modify, or reverse the administrative law judge's decision. It also may remand your claim to the administrative law judge for further action and decision.

(c) The Board is also the final step in the administrative review process if the administrative law judge dismissed your request for a hearing under § 405.380 of this part. As explained in § 405.382 of this part, you must ask the administrative law judge to vacate his or her dismissal order before you may ask the Board to vacate the order.

(d) In addition, the Board may review your claim after the administrative law judge's decision has been effectuated to study our disability determination process. If the Board reviews your claim under this paragraph, it will not change the administrative law judge's decision in your claim, unless the Board determines that the rules in subpart G of this part apply. If the Board determines that subpart G applies, it may reopen and revise the administrative law judge's decision.

(e) The Board also may identify issues that impede consistent adjudication at all levels of the disability determination process and may recommend improvements to that process.

### § 405.410 Selecting claims for Decision Review Board review.

(a)(1) The Board may review your claim if the administrative law judge made a decision under §§ 405.340 or 405.370 of this part, regardless of whether the administrative law judge's decision was unfavorable, partially favorable, or wholly favorable to you.

(2) Claims the Board will review may include those where there is an increased likelihood of error or that involve the application of new policies, rules, or procedures. The Board will review both allowances and denials of benefits. It will not review claims based on the identity of the administrative law judge who decided the claim.

(b)(1) The Board may reopen claims under subpart G of this part without regard to the time limits therein, if, in the view of our effectuating component, the administrative law judge's decision cannot be effectuated because it contains a clerical error affecting the outcome of the claim, the decision is clearly inconsistent with the Act or our regulations, or the decision is unclear regarding a matter that affects the outcome of the claim.

(2) If the Board reopens your claim, it will do so no later than 60 days from the date of the administrative law judge's decision.

### § 405.415 Notification by the Decision Review Board.

When the Board reviews your claim, we will notify you. The notice will explain that the Board will review the decision and will complete its action on your claim within 90 days of the date you receive notice. The notice also will explain that if the Board does not complete its action on your claim within 90 days, the administrative law judge's decision will become our final decision.

### § 405.420 Effect of Decision Review Board action on the right to seek judicial review.

(a)(1) Subject to the provisions of paragraph (a)(2) of this section, if the Board reviews your claim, the administrative law judge's decision will not be our final decision.

(2) If the Board does not complete its review within 90 days of the date you

**§ 405.425**

receive notice that the Board will review your claim, the administrative law judge's decision will become our final decision. If you are dissatisfied with this final decision, you may seek judicial review of the decision under section 205(g) of the Act within 60 days of the expiration of the 90-day time period. The Board will take no further action with respect to your claim, unless it determines that it can make a decision that is fully favorable to you under the provisions of paragraph (a)(3) of this section.

(3) If the administrative law judge's decision becomes our final decision under the provisions of paragraph (a)(2) of this section, but the Board determines that it can make a decision that is fully favorable to you, it will reopen the administrative law judge's decision in accordance with subpart G of this part without regard to the time limits therein, and revise it as appropriate. If you have already sought judicial review of the final decision under section 205(g) of the Act, the Board will notify the Office of the General Counsel, which will then take appropriate action to request that the court remand the claim for the purpose of issuing the Board's decision.

(4) Paragraphs (a)(2) and (3) of this section do not apply to dismissals that you have asked the Board to review. You must wait for the Board to take action. The appeal rights, if any, that will be available at that time depend on the nature of the Board's action and will be explained in the Board's notice.

(b)(1) When the Board reviews your claim, it will either make our final decision or remand the claim to an administrative law judge for further proceedings consistent with the Board's remand order.

(2) If the Board makes our final decision in your claim, it will send you notice of the decision, as explained in § 405.445. If you are dissatisfied with the final decision, you may seek judicial review of the decision under section 205(g) of the Act.

(3) If the Board remands your claim to an administrative law judge, the Board's remand order is not our final decision and you may not seek judicial review of the remand order under section 205(g) of the Act. The administra-

**20 CFR Ch. III (4-1-11 Edition)**

tive law judge's decision after remand will become our final decision, unless the Board reviews the decision under § 405.410.

(c) The Board's action under § 405.427 on your request to vacate the administrative law judge's dismissal of your request for review is not subject to further review.

**§ 405.425 Procedures before the Decision Review Board.**

(a) The Board may limit the issues that it considers and when it does, will notify you of those issues.

(b) You may submit a written statement within 10 days of the date you receive notice of the Board's review or the Board may ask you to submit a written statement within a certain time period. The written statement may be no longer than 2,000 words, and if typed, the typeface must be 12 point font or larger. The written statement should briefly explain why you agree or disagree with the administrative law judge's decision and should cite applicable law and specific facts in the record.

**§ 405.427 Procedures before the Decision Review Board in claims dismissed by an administrative law judge.**

(a) If you are dissatisfied with the administrative law judge's action on your request to vacate a dismissal under § 405.382 of this part, you may request that the Board vacate it. The Board will not consider your request to vacate a dismissal until the administrative law judge has ruled on your request. Your request to the Decision Review Board must be in writing and must be filed within 60 days after the date you receive the notice of the administrative law judge's action under § 405.382 of this part.

(b) When you request the Board to review the administrative law judge's dismissal of your claim, you may submit additional evidence, but the Board will accept only evidence that is relevant to the dismissal issue. All other evidence will be returned to you.

(c)(1) If you request the Board to vacate the administrative law judge's dismissal of your request for a hearing, you may submit a written statement

## Social Security Administration

## § 405.450

with the Board at the time that you ask the Board to vacate the dismissal order. The written statement may be no more than 2,000 words, and, if it is typed, the typeface must be 12 point font or larger. The written statement should briefly explain why you agree or disagree with the administrative law judge's decision and should cite to the relevant facts in the record and applicable law.

(2) If you file a written statement with the Board after you request it to vacate the dismissal, the Board will not consider your written statement and will return it to you without placing it in the record.

(d) If you request the Board to vacate the administrative law judge's dismissal of your request for a hearing, the Board will take one of the following actions:

(1) Vacate the administrative law judge's dismissal order. If the Board issues an order vacating the administrative law judge's dismissal order, it will remand the claim to the administrative law judge for further proceedings consistent with the Board's order, or

(2) Decline to vacate the dismissal order.

### § 405.430 Record before the Decision Review Board.

Subject to § 405.373(b) of this part, in claims reviewed by the Board, the record is closed as of the date of the administrative law judge's decision, and the Board will base its action on the same evidence that was before the administrative law judge. When it reviews a claim, the Board will consider only that evidence that was in the record before the administrative law judge.

### § 405.440 Actions that the Decision Review Board may take.

(a) *General.* The Board may review the administrative law judge's findings of fact and application of the law. It will apply the substantial evidence standard in reviewing the findings of fact, but review de novo the application of the law.

(b) Subject to the provision of § 405.420(a)(2), when it reviews a claim

that has been referred to it, the Board may take one of the following actions:

(1) If the administrative law judge's decision is supported by substantial evidence and there is no significant error of law, affirm the decision;

(2) Where there is an error of law, issue its own decision which affirms, reverses, or modifies the administrative law judge's decision;

(3) Where there are factual findings that are unsupported by substantial evidence and further development is necessary to reach a decision, remand your claim to the administrative law judge for further proceedings consistent with the Board's order. If the Board remands your claim to the administrative law judge for further proceedings, the administrative law judge must take any action that is specified by the Board in its remand order and may take any additional action that is not inconsistent with the Board's remand order.

### § 405.445 Notification of the Decision Review Board's action.

We will send notice of the Board's action to you at your last known address. The notice will explain in clear and understandable language the specific reasons for the Board's action. If the Board issues a decision, it will explain in clear and understandable language the specific reasons for its decision and the notice will also explain how to seek judicial review, and explain your right to representation. If the Board issues a remand order, the notice will explain that the remand order is not our final decision.

### § 405.450 Effect of the Decision Review Board's action.

(a) The Board's decision is binding unless you file an action in Federal district court, or the decision is revised under subpart G of this part.

(b) The administrative law judge's decision is binding if the Board does not complete its action within 90 days of the date you receive notice that the Board will review your claim, unless you file an action in Federal district court, or the decision is revised under subpart G of this part.

(c) The Board's action to remand your claim to an administrative law

## § 405.501

judge is binding and not subject to judicial review.

(d) The Board's action under § 405.427 on a request to vacate an administrative law judge's dismissal order is binding and not subject to further review.

### Subpart F—Judicial Review

#### § 405.501 Judicial review.

You may file an action in a Federal district court within 60 days of the date our decision becomes final and judicially reviewable.

#### § 405.505 Extension of time to file a civil action.

If you have received our final decision, you may request that we extend the time for seeking judicial review in a Federal district court. Your request must be in writing and explain why the action was not filed, or cannot be filed, on time. The request must be filed with the Board. If you show that you have good cause for missing the deadline, we will extend the time period. We will use the standards in § 405.20 of this part to determine if you have good cause for an extension of time.

#### § 405.510 Claims remanded by a Federal court.

When a Federal court remands a claim decided under this part to us for further consideration, the Board may make a decision based upon the evidence in the record, or it may remand the claim to an administrative law judge. If the Board remands a claim to an administrative law judge, it will send you a notice.

#### § 405.515 Application of circuit court law.

We will follow the procedures in §§ 404.985 and 416.1485 of this chapter for claims decided under this part.

### Subpart G—Reopening and Revising Determinations and Decisions

#### § 405.601 Reopening and revising determinations and decisions.

(a) Subject to paragraph (b), the reopening procedures of §§ 404.987 through 404.996 of this chapter apply to title II

## 20 CFR Ch. III (4–1–11 Edition)

claims and the procedures of §§ 416.1487 through 416.1494 of this chapter apply to title XVI claims.

(b) When we have issued a final decision after a hearing on a claim that you seek to have reopened, for purposes of this part, the time frames for good cause under §§ 404.988(b) and 416.1488(b) of this chapter are six months from the date of the final decision and we will not find that “new and material evidence” under §§ 404.989(a)(1) and 416.1489(a)(1) of this chapter is a basis for good cause.

[71 FR 16446, Mar. 31, 2006; 71 FR 17990, Apr. 10, 2006]

### Subpart H—Expedited Appeals Process for Constitutional Issues

#### § 405.701 Expedited appeals process—general.

You may use the expedited appeals process if you have no dispute with our findings of fact and our application and interpretation of the controlling law, but you believe that a part of that law is unconstitutional. By using the expedited appeals process you may go directly to a Federal district court without first completing the administrative review process that is generally required before the court will hear your claim.

#### § 405.705 When the expedited appeals process may be used.

If you have filed a disability claim, you may use the expedited appeals process if all of the following requirements are met:

(a) You have received an initial determination and a decision by a Federal reviewing official, but an administrative law judge has not made a decision;

(b) You have submitted a written request for the expedited appeals process; and

(c) You have our written agreement to use the expedited appeals process as required in § 405.715.

#### § 405.710 How to request an expedited appeal.

(a) *Time limit for filing request.* If you wish to use the expedited appeals process, you must request it—

(1) No later than 60 days after the date you receive notice of the Federal reviewing official's decision (or within the extended time period if we extend the time as provided in paragraph (c) of this section), or

(2) At any time after you have filed a timely request for a hearing but before you receive notice of the administrative law judge's decision.

(b) *Place for filing request.* You should file a written request for an expedited appeal at one of our offices. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service, or at least five years of service accruing after December 31, 1995, in the railroad industry, an office of the Railroad Retirement Board.

(c) *Extension of time to request expedited appeals process.* If you want to use the expedited appeals process but do not request it in time, you may ask for more time to submit your request. Your request for an extension of time must be in writing and must give the reasons why the request for the expedited appeals process was not filed in time. If you show that you had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, we use the standards explained in §405.20 of this part.

**§405.715 Agreement in expedited appeals process.**

If you meet all the requirements necessary for using the expedited appeals process, our authorized representative shall prepare an agreement. The agreement must be signed by you and by our authorized representative. The agreement must provide that—

(a) The facts in your claim are not in dispute;

(b) The sole issue in dispute is whether a provision of the Act that applies to your claim is unconstitutional;

(c) Except for your belief that a provision of the Act is unconstitutional, you agree with our interpretation of the law;

(d) If the provision of the Act that you believe is unconstitutional were

not applied to your claim, your claim would be allowed; and

(e) Our decision is final for the purpose of seeking judicial review.

**§405.720 Notice of agreement to expedite appeal.**

If we agree that you can use the expedited appeals process, a signed copy of the agreement will be mailed to you and will constitute notice. If you do not meet all of the requirements necessary to use the expedited appeals process, we will advise you that your request to use this process is denied and that your request will be considered as a request for a hearing, if you have not already requested a hearing.

**§405.725 Effect of expedited appeals process agreement.**

After an expedited appeals process agreement is signed, you will not need to complete the remaining steps of the administrative review process. Instead, you may file an action in the Federal district court in the district where you reside. You must file within 60 days after the date you receive notice that the agreement has been signed by our authorized representative.

**Subpart I [Reserved]**

**Subpart J—Payment of Certain Travel Expenses**

**§405.901 Reimbursement of certain travel expenses.**

When you file a disability claim, you may incur certain travel expenses that may be reimbursable. We use §§404.999a through 404.999d of this chapter for title II claims and §§416.1495 through 416.1499 of this chapter for title XVI claims in determining reimbursable expenses and for explaining how and where you may request reimbursement.

**PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS**

**Subpart A—Introduction, General Provision and Definitions**

Sec.

408.101 What is this part about?

408.105 Purpose and administration of the program.