

Social Security Administration

§416.1517

requests direct fee payment. (See §416.1540(b)(4)).

[76 FR 56109, Sept. 12, 2011]

§416.1515 Notice or request to a representative.

(a) We shall send your representative—

(1) Notice and a copy of any administrative action, determination, or decision; and

(2) Requests for information or evidence.

(b) A notice or request sent to your representative will have the same force and effect as if it had been sent to you.

§416.1517 Direct payment of fees to eligible non-attorney representatives.

(a) *Criteria for eligibility.* An individual who is a licensed attorney or who is suspended or disbarred from the practice of law in any jurisdiction may not be an eligible non-attorney. A non-attorney representative is eligible to receive direct payment of his or her fee out of your past-due benefits if he or she:

(1) Completes and submits to us an application as described in paragraph (b) of this section;

(2) Pays the application fee as described in paragraph (c) of this section;

(3) Demonstrates that he or she possesses:

(i) A bachelor's degree from an accredited institution of higher learning; or

(ii) At least four years of relevant professional experience and either a high school diploma or a General Educational Development certificate;

(4) Passes our criminal background investigation (including checks of our administrative records), and attests under penalty of perjury that he or she:

(i) Has not been suspended or disqualified from practice before us and is not suspended or disbarred from the practice of law in any jurisdiction;

(ii) Has not had a judgment or lien assessed against him or her by a civil court for malpractice or fraud;

(iii) Has not had a felony conviction; and

(iv) Has not misrepresented information provided on his or her application or supporting materials for the application;

(5) Takes and passes a written examination we administer;

(6) Provides proof of and maintains continuous liability insurance coverage in an amount we prescribe; and

(7) Completes and provides proof that he or she has completed all continuing education courses that we prescribe by the deadline we prescribe.

(b) *Application.* An applicant must timely submit his or her completed application form during an application period that we prescribe. The application must be postmarked by the last day of the application period. If an applicant timely submits the application fee and a defective application, we will give the applicant 10 calendar days after the date we notify him or her of the defect to correct the application.

(c) *Application fee.* An applicant must timely submit his or her application fee during the application period. We will set the fee annually.

(1) We will refund the fee if:

(i) We do not administer an examination, and an applicant was unable to take the rescheduled examination; or

(ii) Circumstances beyond the applicant's control that could not have been reasonably anticipated and planned for prevent an applicant from taking a scheduled examination.

(2) We will not refund the fee if:

(i) An applicant took and failed the examination; or

(ii) An applicant failed to arrive on time for the examination because of circumstances within the applicant's control that could have been anticipated and planned for.

(d) *Protest procedures.* (1) We may find that a non-attorney representative is ineligible to receive direct fee payment at any time because he or she fails to meet any of the criteria in paragraph (a) of this section. A non-attorney representative whom we find to be ineligible for direct fee payment may protest our finding only if we based it on the representative's failure to:

(i) Attest on the application or provide sufficient documentation that he or she possesses the required education or equivalent qualifications, as described in paragraph (a)(3) of this section;

(ii) Meet at all times the criminal background investigation criteria, as

described in paragraph (a)(4) of this section

(iii) Provide proof that he or she has maintained continuous liability insurance coverage, as described in paragraph (a)(6) of this section, after we previously determined the representative was eligible to receive direct fee payment; or

(iv) Complete continuing education courses or provide documentation of the required continuing education courses, as described in paragraph (a)(7) of this section.

(2) A non-attorney representative who wants to protest our finding under paragraph (d)(1) of this section must file a protest in writing and provide all relevant supporting documentation to us within 10 calendar days after the date we notify him or her of our finding.

(3) A representative may not file a protest for reasons other than those listed in paragraph (d)(1) of this section. If a representative files a protest for reasons other than those listed in paragraph (d)(1) of this section, we will not process the protest and will implement our finding as if no protest had been filed. Our finding in response to the protest is final and not subject to further review.

(e) *Ineligibility and suspension.* (1) If an applicant does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraphs (a)(3) or (a)(4) of this section, the applicant will be either ineligible to take the written examination for which he or she applied or ineligible to receive direct fee payment if the applicant already took and passed the examination prior to our finding. If an applicant protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the applicant will be either ineligible to take the written examination for which he or she applied or ineligible to receive direct fee payment if the applicant already took and passed the examination prior to our finding.

(2) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraphs (a)(3) or (a)(4) of this section, the non-attorney representative

will be ineligible to receive direct fee payment beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney representative will be ineligible to receive direct fee payment beginning with the month after the month we uphold our finding.

(3) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraph (a)(6) of this section, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month we uphold our finding. In either case, the non-attorney representative may provide us with documentation that he or she has acquired and maintains the required liability insurance coverage described in paragraph (a)(6) of this section, no earlier than the sixth month of the ineligibility. The non-attorney representative will again be eligible to receive direct fee payment beginning in the first month after the month we find that we have received sufficient documentation that the non-attorney representative meets the requirements of paragraph (a)(6) of this section.

(4) If an eligible non-attorney representative does not protest, in accordance with paragraph (d)(2) of this section, our finding about the criteria in paragraph (a)(7) of this section, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the month after the month the protest period ends. If the eligible non-attorney representative protests in accordance with paragraph (d)(2) of this section and we uphold our finding, the non-attorney representative will be ineligible to receive direct fee payment for 6 full calendar months beginning with the

month after the month we uphold our finding. In either case, the non-attorney representative may provide us with documentation that he or she has satisfied the criteria in paragraph (a)(7) of this section at any time. The non-attorney representative will again be eligible to receive direct fee payment beginning in the first month after the month we find that we have received sufficient documentation, but not earlier than the month following the end of the 6 month ineligibility period.

(f) *Reapplying.* A representative may reapply to become eligible to receive direct fee payment under paragraph (a) of this section during any subsequent application period if he or she:

(1) Did not meet the initial criteria for eligibility in paragraphs (a)(1), (2), (3), and (5) of this section in a prior application period; or

(2) Failed to timely correct a defective application in a prior application period as described in paragraph (b) of this section.

[76 FR 45194, July 28, 2011]

§ 416.1520 Fee for a representative's services.

(a) *General.* A representative may charge and receive a fee for his or her services as a representative only as provided in paragraph (b) of this section.

(b) *Charging and receiving a fee.* (1) The representative must file a written request with us before he or she may charge or receive a fee for his or her services.

(2) We decide the amount of the fee, if any, a representative may charge or receive.

(3) Subject to paragraph (e) of this section, a representative must not charge or receive any fee unless we have authorized it, and a representative must not charge or receive any fee that is more than the amount we authorize.

(4) If your representative is an attorney or an eligible non-attorney, and you are entitled to past-due benefits, we will pay the authorized fee, or a part of the authorized fee, directly to the attorney or eligible non-attorney out of the past-due benefits, subject to the limitations described in § 416.1530(b)(1). If the representative is a

non-attorney who is ineligible to receive direct fee payment, we assume no responsibility for the payment of any fee that we have authorized.

(c) *Notice of fee determination.* We shall mail to both you and your representative at your last known address a written notice of what we decide about the fee. We shall state in the notice—

(1) The amount of the fee that is authorized;

(2) How we made that decision;

(3) Whether we are responsible for paying the fee from past-due benefits; and

(4) That within 30 days of the date of the notice, either you or your representative may request us to review the fee determination.

(d) *Review of fee determination—*(1) *Request filed on time.* We will review the decision we made about a fee if either you or your representative files a written request for the review at one of our offices within 30 days after the date of the notice of the fee determination. Either you or your representative, whoever requests the review, shall mail a copy of the request to the other person. An authorized official of the Social Security Administration who did not take part in the fee determination being questioned will review the determination. This determination is not subject to further review. The official shall mail a written notice of the decision made on review both to you and to your representative at your last known address.

(2) *Request not filed on time.* (i) If you or your representative requests a review of the decision we made about a fee, but does so more than 30 days after the date of the notice of the fee determination, whoever makes the request shall state in writing why it was not filed within the 30-day period. We will review the determination if we decide that there was good cause for not filing the request on time.

(ii) Some examples of good cause follow:

(A) Either you or your representative was seriously ill and the illness prevented you or your representative from contacting us in person or in writing.