

Social Security Administration

§ 404.1720

period, as described in paragraph (b) of this section.

[76 FR 45192, July 28, 2011]

§ 404.1720 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 § 404.1730(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 writ-

ten 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.

(B) There was a death or serious illness in your family or in the family of your representative.

(C) Material records were destroyed by fire or other accidental cause.

(D) We gave you or your representative incorrect or incomplete information about the right to request review.

(E) You or your representative did not timely receive notice of the fee determination.

(F) You or your representative sent the request to another government agency in good faith within the 30-day period, and the request did not reach us until after the period had ended.

(3) *Payment of fees.* We assume no responsibility for the payment of a fee based on a revised determination if the request for administrative review was not filed on time.

(e) *When we do not need to authorize a fee.* We do not need to authorize a fee when:

(1) An entity or a Federal, State, county, or city government agency

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pays from its funds the representative fees and expenses and both of the following conditions apply:

(i) You and your auxiliary beneficiaries, if any, are not liable to pay a fee or any expenses, or any part thereof, directly or indirectly, to the representative or someone else; and

(ii) The representative submits to us a writing in the form and manner that we prescribe waiving the right to charge and collect a fee and any expenses from you and your auxiliary beneficiaries, if any, directly or indirectly, in whole or in part; or

(2) A court authorizes a fee for your representative based on the representative's actions as your legal guardian or a court-appointed representative.

[45 FR 52090, Aug. 5, 1980, as amended at 72 FR 16724, Apr. 5, 2007; 74 FR 48384, Sept. 23, 2009; 76 FR 45193, July 28, 2011]

§ 404.1725 Request for approval of a fee.

(a) *Filing a request.* In order for your representative to obtain approval of a fee for services he or she performed in dealings with us, he or she shall file a written request with one of our offices. This should be done after the proceedings in which he or she was a representative are completed. The request must contain—

(1) The dates the representative's services began and ended;

(2) A list of the services he or she gave and the amount of time he or she spent on each type of service;

(3) The amount of the fee he or she wants to charge for the services;

(4) The amount of fee the representative wants to request or charge for his or her services in the same matter before any State or Federal court;

(5) The amount of and a list of any expenses the representative incurred for which he or she has been paid or expects to be paid;

(6) A description of the special qualifications which enabled the representative, if he or she is not an attorney, to give valuable help in connection with your claim; and

(7) A statement showing that the representative sent a copy of the request for approval of a fee to you.

(b) *Evaluating a request for approval of a fee.* (1) When we evaluate a represent-

ative's request for approval of a fee, we consider the purpose of the social security program, which is to provide a measure of economic security for the beneficiaries of the program, together with—

(i) The extent and type of services the representative performed;

(ii) The complexity of the case;

(iii) The level of skill and competence required of the representative in giving the services;

(iv) The amount of time the representative spent on the case;

(v) The results the representative achieved;

(vi) The level of review to which the claim was taken and the level of the review at which the representative became your representative; and

(vii) The amount of fee the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred.

(2) Although we consider the amount of benefits, if any, that are payable, we do not base the amount of fee we authorize on the amount of the benefit alone, but on a consideration of all the factors listed in this section. The benefits payable in any claim are determined by specific provisions of law and are unrelated to the efforts of the representative. We may authorize a fee even if no benefits are payable.

§ 404.1728 Proceedings before a State or Federal court.

(a) *Representation of a party in court proceedings.* We shall not consider any service the representative gave you in any proceeding before a State or Federal court to be services as a representative in dealings with us. However, if the representative also has given service to you in the same connection in any dealings with us, he or she must specify what, if any, portion of the fee he or she wants to charge is for services performed in dealings with us. If the representative charges any fee for those services, he or she must file the request and furnish all of the information required by § 404.1725.

(b) *Attorney fee allowed by a Federal court.* If a Federal court in any proceeding under title II of the Act makes