

## § 404.1592d

(1) You were previously entitled to one of the following benefits on the record of the insured person—

(i) A spouse or divorced spouse benefit under §§ 404.330 and 404.331;

(ii) A child's benefit under § 404.350; or

(iii) A parent's benefit under § 404.370;

(2) You were entitled to benefits on the record when we terminated the insured person's entitlement;

(3) You meet the requirements for entitlement to the benefit described in the applicable paragraph (b)(1)(i) through (b)(1)(iii) of this section; and

(4) You request to be reinstated.

(c) We will determine that you are not able to do substantial gainful activity because of your medical condition, under paragraph (a)(4)(i) of this section, when:

(1) You certify under § 404.1592d(d)(2) that you are unable to do substantial gainful activity because of your medical condition;

(2) You do not do substantial gainful activity in the month you file your request for reinstatement; and

(3) We determine that you are disabled under paragraph (a)(4)(iii) of this section.

[70 FR 57142, Sept. 30, 2005]

### § 404.1592d How do I request reinstatement?

(a) You must make your request for reinstatement in writing.

(b) You must have filed your request on or after January 1, 2001.

(c) You must provide the information we request so that we can determine whether you meet the requirements for reinstatement as indicated in § 404.1592c.

(d) If you request reinstatement under § 404.1592c(a)—

(1) We must receive your request within the consecutive 60-month period that begins with the month in which your entitlement terminated due to doing substantial gainful activity. If we receive your request after the 60-month period we can grant you an extension if we determine you had good cause under the standards explained in § 404.911 for not filing the request timely; and

(2) You must certify that you are disabled, that your current impairment(s) is the same as or related to the impair-

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ment(s) that we used as the basis for the benefit you are requesting to be reinstated, and that you are unable to do substantial gainful activity because of your medical condition.

[70 FR 57142, Sept. 30, 2005]

### § 404.1592e How do we determine provisional benefits?

(a) You may receive up to 6 consecutive months of provisional cash benefits and Medicare during the provisional benefit period, while we determine whether we can reinstate your disability benefit entitlement under § 404.1592c—

(1) We will pay you provisional benefits, and reinstate your Medicare if you are not already entitled to Medicare, beginning with the month you file your request for reinstatement under § 404.1592c(a).

(2) We will pay you a monthly provisional benefit amount equal to the last monthly benefit payable to you during your prior entitlement, increased by any cost of living increases that would have been applicable to the prior benefit amount under § 404.270. The last monthly benefit payable is the amount of the monthly insurance benefit we determined that was actually paid to you for the month before the month in which your entitlement was terminated, after we applied the reduction, deduction and nonpayment provisions in § 404.401 through § 404.480.

(3) If you are entitled to another monthly benefit payable under the provisions of title II of the Act for the same month you can be paid a provisional benefit, we will pay you an amount equal to the higher of the benefits payable.

(4) If you request reinstatement for more than one benefit entitlement, we will pay you an amount equal to the higher of the provisional benefits payable.

(5) If you are eligible for Supplemental Security Income payments, including provisional payments, we will reduce your provisional benefits under § 404.408b if applicable.

(6) We will not reduce your provisional benefit, or the payable benefit to other individuals entitled on an earnings record, under § 404.403, when your provisional benefit causes the total

benefits payable on the earnings record to exceed the family maximum.

(b) You cannot receive provisional cash benefits or Medicare a second time under this section when—

(1) You request reinstatement under § 404.1592c(a);

(2) You previously received provisional cash benefits or Medicare under this section based upon a prior request for reinstatement filed under § 404.1592c(a); and

(3) Your requests under paragraphs (b)(1) and (b)(2) are for the same previous disability entitlement referred to in § 404.1592c(a)(2).

(4) *Examples:*

*Example 1:* Mr. K files a request for reinstatement in April 2004. His disability benefit had previously terminated in January 2003. Since Mr. K meets other factors for possible reinstatement (*i.e.*, his prior entitlement was terminated within the last 60 months because he was engaging in substantial gainful activity), we start paying him provisional benefits beginning April 2004 while we determine whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2003. In July 2004 we determine that Mr. K cannot be reinstated because he is not disabled under the medical improvement review standard; therefore we stop his provisional benefits. Mr. K does not request review of that determination. In January 2005 Mr. K again requests reinstatement on the entitlement that terminated in January 2003. Since this request meets all the factors for possible reinstatement, and his request is still within 60 months from January 2003, we will make a new determination on whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2003. Since the January 2005 request and the April 2004 request both request reinstatement on the same entitlement that terminated in January 2003, and since we already paid Mr. K provisional benefits based upon the April 2004 request, we will not pay additional provisional benefits on the January 2005 request for reinstatement.

*Example 2:* Assume the same facts as shown in Example 1 of this section, with the addition of these facts. We approve Mr. K's January 2005 request for reinstatement and start his reinstated benefits beginning January 2005. Mr. K subsequently returns to work and his benefits are again terminated due to engaging in substantial gainful activity in January 2012. Mr. K must again stop work and requests reinstatement in January 2015.

Since Mr. K meets other factors for possible reinstatement (*i.e.*, his prior entitlement was terminated within the last 60 months because he was engaging in substantial gainful activity) we start paying him provisional benefits beginning January 2015 while we determine whether he is disabled and whether his current impairment(s) is the same as or related to the impairment(s) that we used as the basis for the benefit that was terminated in January 2012.

(c) We will not pay you a provisional benefit for a month when an applicable nonpayment rule applies. Examples of when we will not pay a benefit include, but are not limited to—

(1) If you are a prisoner under § 404.468;

(2) If you have been removed/deported under § 404.464; or

(3) If you are an alien outside the United States under § 404.460.

(d) We will not pay you a provisional benefit for any month that is after the earliest of the following months—

(1) The month we send you a notice of our determination on your request for reinstatement;

(2) The month you do substantial gainful activity;

(3) The month before the month you attain full retirement age; or

(4) The fifth month following the month you requested expedited reinstatement.

(e) You are not entitled to provisional benefits if—

(1) Prior to starting your provisional benefits, we determine that you do not meet the requirements for reinstatement under §§ 404.1592c(a); or

(2) We determine that your statements on your request for reinstatement, made under § 404.1592d(d)(2), are false.

(f) Determinations we make regarding your provisional benefits under paragraphs (a) through (e) of this section are final and are not subject to administrative and judicial review under subpart J of part 404.

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

(h) If we determine you are not entitled to reinstated benefits, provisional

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benefits we have already paid you under this section that were made prior to the termination month under paragraph (d) of this section will not be subject to recovery as an overpayment unless we determine that you knew, or should have known, you did not meet the requirements for reinstatement in § 404.1592c. If we inadvertently pay you provisional benefits when you are not entitled to them because we have already made a determination described in paragraph (e) of this section, they will be subject to recover as an overpayment under subpart F of part 404.

[70 FR 57142, Sept. 30, 2005]

### § 404.1592f How do we determine reinstated benefits?

(a) If you meet the requirements for reinstatement under § 404.1592c(a), we will then consider in which month to reinstate your entitlement. We will reinstate your entitlement with the earliest month, in the 12-month period that ends with the month before you filed your request for reinstatement, that you would have met all of the requirements under § 404.1592c(a) if you had filed your request for reinstatement in that month. Otherwise, you will be entitled to reinstated benefits beginning with the month in which you filed your request for such benefits. We cannot reinstate your entitlement for any month prior to January 2001.

(b) When your entitlement is reinstated, you are also entitled to Medicare benefits under the provisions of 42 CFR part 406.

(c) We will compute your reinstated benefit amount and determine benefits payable under the applicable paragraphs of §§ 404.201 through 404.480 with certain exceptions—

(1) We will reduce your reinstated benefit due in a month by the amount of the provisional benefit we already paid you for that month. If your provisional benefit paid for a month exceeds the reinstated benefit, we will treat the difference as an overpayment under §§ 404.501 through 404.527.

(2) If you are reinstated on your own earnings record, we will compute your primary insurance amount with the same date of onset we used in your most recent period of disability on your earnings record.

(d) We will not pay you reinstated benefits for any months of substantial gainful activity during your initial reinstatement period. During the initial reinstatement period, the trial work period provisions of § 404.1592 and the reentitlement period provisions of § 404.1592a do not apply. The initial reinstatement period begins with the month your reinstated benefits begin under paragraph (a) of this section and ends when you have had 24 payable months of reinstated benefits. We consider you to have a payable month for the purposes of this paragraph when you do not do substantial gainful activity in that month and when the non-payment provisions in subpart E of part 404 also do not apply. If the amount of the provisional benefit already paid you for a month equals or exceeds the amount of the reinstated benefit payable for that month so that no additional payment is due, we will consider that month a payable month. When we determine if you have done substantial gainful activity in a month during the initial reinstatement period, we will consider only your work in, or earnings for, that month. We will not apply the unsuccessful work attempt provisions of §§ 404.1574(c) and 404.1575(d) or the averaging of earnings provisions in § 404.1574a.

(e) After you complete the 24-month initial reinstatement period as indicated in paragraph (d) of this section, your subsequent work will be evaluated under the trial work provisions in § 404.1592 and then the reentitlement period in § 404.1592a.

(f) Your entitlement to reinstated benefits ends with the month before the earliest of the following months—

(1) The month an applicable terminating event in § 404.301 through 404.389 occurs;

(2) The month in which you reach retirement age;

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

(4) The month in which you die.

(g) Determinations we make under §§ 404.1592f are initial determinations under § 404.902 and subject to review under subpart J of part 404.