

Social Security Administration

§ 404.1735

pay the representative out of the past-due benefits, the smaller of the amounts in paragraph (b)(1)(i) or (ii) of this section, less the amount of the assessment described in paragraph (d) of this section.

(i) Twenty-five percent of the total of the past-due benefits; or

(ii) The amount of the fee that we set.

(2) *Non-attorneys not eligible to participate in the direct payment demonstration project.* If the representative is a non-attorney who is not eligible to participate in the direct payment demonstration project, we assume no responsibility for the payment of any fee that we have authorized. We will not deduct the fee from your past-due benefits.

(c) *Time limit for filing request for approval of fee in order to obtain direct payment.* (1) In order to receive direct payment of a fee from your past-due benefits, a representative who is either an attorney or a non-attorney who is eligible to participate in the direct payment demonstration project should file a request for approval of a fee, or written notice of the intent to file a request, at one of our offices within 60 days of the date the notice of the favorable determination is mailed.

(2)(i) If no request is filed within 60 days of the date the notice of the favorable determination is mailed, we will mail a written notice to you and your representative at your last known addresses. The notice will inform you and the representative that unless the representative files, within 20 days from the date of the notice, a written request for approval of a fee under § 404.1725, or a written request for an extension of time, we will pay all the past-due benefits to you.

(ii) The representative must send you a copy of any request made to us for an extension of time. If the request is not filed within 20 days of the date of the notice, or by the last day of any extension we approved, we will pay all past-due benefits to you. We must approve any fee the representative charges after that time, but the collection of any approved fee is a matter between you and the representative.

(d) *Assessment when we pay a fee directly to a representative.* (1) Whenever we pay a fee directly to a representa-

tive from past-due benefits, we impose an assessment on the representative.

(2) The amount of the assessment is equal to the lesser of:

(i) The product we obtain by multiplying the amount of the fee we are paying to the representative by the percentage rate the Commissioner of Social Security determines is necessary to achieve full recovery of the costs of determining and paying fees directly to representatives, but not in excess of 6.3 percent; and

(ii) The maximum assessment amount. The maximum assessment amount was initially set at \$75, but by law is adjusted annually to reflect the increase in the cost of living. (See §§ 404.270 through 404.277 for an explanation of how the cost-of-living adjustment is computed.) If the adjusted amount is not a multiple of \$1, we round down the amount to the next lower \$1, but the amount will not be less than \$75. We will announce any increase in the maximum assessment amount and explain how the increase was determined in the FEDERAL REGISTER.

(3) We collect the assessment by subtracting it from the amount of the fee to be paid to the representative. The representative who is subject to an assessment may not, directly or indirectly, request or otherwise obtain reimbursement of the assessment from you.

[72 FR 16724, Apr. 5, 2007]

§ 404.1735 Services in a proceeding under title II of the Act.

Services provided a claimant in any dealing with us under title II of the Act consist of services performed for that claimant in connection with any claim he or she may have before the Commissioner of Social Security under title II of the Act. These services include any in connection with any asserted right a claimant may have calling for an initial or reconsidered determination by us, and a decision or action by an administrative law judge or by the Appeals Council.

[45 FR 52090, Aug. 5, 1980, as amended at 62 FR 38452, July 18, 1997]