

§ 404.540

is also made from title II benefits and excluding income excluded pursuant to §§ 416.1112 and 416.1124 of this chapter).

(2) Paragraph (b)(1) of this section does not apply if:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(c) In determining whether to grant your request that we withhold less than the amount described in paragraph (b)(1) of this section, we will use the criteria applied under § 404.508 to similar requests about withholding from title II benefits.

(d) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment by withholding the lesser of the overpayment balance or the entire amount of title VIII and title XVI benefits payable to you. We will not collect at a lesser rate. (See § 416.571 of this chapter for what we mean by concealment of material information.)

[70 FR 15, Jan. 3, 2005]

§ 404.540 Will you receive notice of our intention to apply cross-program recovery?

Before we collect an overpayment from you using cross-program recovery, we will send you a written notice that tells you the following information:

(a) We have determined that you owe a specific overpayment balance that can be collected by cross-program recovery;

(b) We will withhold a specific amount from the title VIII or title XVI benefits (see § 404.535);

(c) You may ask us to review this determination that you still owe this overpayment balance;

(d) You may request that we withhold a different amount from your current monthly benefits (the notice will not include this information if § 404.535(d) applies); and

(e) You may ask us to waive collection of this overpayment balance.

[70 FR 15, Jan. 3, 2005]

20 CFR Ch. III (4-1-08 Edition)

§ 404.545 When will we begin cross-program recovery from current monthly benefits?

(a) We will begin collecting the overpayment balance from your title VIII or title XVI current monthly benefits or payments by cross-program recovery no sooner than 30 calendar days after the date of the notice described in § 404.540. If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin cross-program recovery.

(b) If within that 30-day period you ask us to review our determination that you still owe us this overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing.

(c) If within that 30-day period you ask us to withhold a different amount than the amount stated in the notice, we will not begin cross-program recovery from your current monthly benefits until we determine the amount we will withhold. This paragraph does not apply when § 404.535(d) applies.

(d) If within that 30-day period you ask us to waive recovery of the overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing. See §§ 404.506 through 404.512.

[70 FR 15, Jan. 3, 2005]

Subpart G—Filing of Applications and Other Forms

AUTHORITY: Secs. 202 (i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 702(a)(5) of the Social Security Act (42 U.S.C. 402 (i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 902(a)(5)).

SOURCE: 44 FR 37209, June 26, 1979, unless otherwise noted.

GENERAL PROVISIONS

§ 404.601 Introduction.

This subpart contains the Social Security Administration's rules for filing a claim for old-age, disability, dependents', and survivors' insurance benefits as described in subpart D of part 404. It

tells what an application is, who may sign it, where and when it must be signed and filed, the period of time it is in effect and how it may be withdrawn. This subpart also explains when a written statement, request, or notice will be considered filed. Since the application form and procedures for filing a claim under this subpart are the same as those used to establish entitlement to Medicare benefits under 42 CFR part 405, persons who wish to become entitled to Medicare benefits should refer to the provisions of this subpart. Requirements concerning applications for the black lung benefits program are contained in part 410. Requirements concerning applications for the supplemental security income program are contained in part 416. Part 422 contains the requirements for applying for a social security number.

§ 404.602 Definitions.

For the purpose of this subpart—

Applicant means the person who files an application for benefits for himself or herself or for someone else. A person who files for himself or herself is both the *applicant* and the *claimant*.

Application refers only to an application on a form described in § 404.611.

Benefits means any old-age, disability, dependents', and survivors' insurance benefits described in subpart D, including a period of disability.

Claimant means the person who files an application for benefits for himself or herself or the person for whom an application is filed.

We, us, or our means the Social Security Administration (SSA).

You or your means, as appropriate, the person who applies for benefits, the person for whom an application is filed, or the person who may consider applying for benefits.

§ 404.603 You must file an application to receive benefits.

In addition to meeting other requirements, you must file an application to become entitled to benefits. If you believe you may be entitled to benefits, you should file an application. Filing an application will—

(a) Permit a formal decision to be made on your entitlement to benefits;

(b) Protect your entitlement to any benefits that may be payable for as many as 6 months or 12 months (depending on the type of benefit, as explained in § 404.621) before the application was filed; and

(c) Give you the right to appeal if you are dissatisfied with the decision.

[44 FR 37209, June 26, 1979, as amended at 46 FR 47444, Sept. 28, 1981]

APPLICATIONS

§ 404.610 What makes an application a claim for benefits?

We will consider your application a claim for benefits if it generally meets all of the following conditions:

(a) You must file on a prescribed form, as stated in § 404.611. See § 422.505(a) of this chapter for the types of prescribed applications you can file.

(b) You must complete and file the application with us as stated in § 404.611 and § 404.614.

(c) You, or someone described in § 404.612 who may sign an application for you, must sign the application.

(d) You must be alive at the time you file (unless one of the limited exceptions in § 404.615 applies).

[69 FR 498, Jan. 6, 2004]

§ 404.611 How do I file an application for Social Security benefits?

(a) *General rule.* You must apply for benefits on an application that we prescribe. See § 422.505(a) of this chapter for the types of applications we will accept. See § 404.614 for places where you can file your application for benefits.

(b) *What if I file a claim with the Railroad Retirement Board (RRB)?* If you file an application with the RRB on one of its forms for an annuity under section 2 of the Railroad Retirement Act, as amended, we will consider this an application for title II Social Security benefits, which you may be entitled to, unless you tell us otherwise.

(c) *What if I file a claim with the Department of Veterans Affairs (DVA)?* If you file an application with the DVA on one of its forms for survivors' dependency and indemnity compensation (see section 3005 of title 38 U.S.C.), we