

## Social Security Administration

## § 405.1

### Subpart F—Judicial Review

- 405.501 Judicial review.
- 405.505 Extension of time to file a civil action.
- 405.510 Claims remanded by a Federal court.
- 405.515 Application of circuit court law.

### Subpart G—Reopening and Revising Determinations and Decisions

- 405.601 Reopening and revising determinations and decisions.

### Subpart H—Expedited Appeals Process for Constitutional Issues

- 405.701 Expedited appeals process—general.
- 405.705 When the expedited appeals process may be used.
- 405.710 How to request an expedited appeal.
- 405.715 Agreement in expedited appeals process.
- 405.720 Notice of agreement to expedite appeal.
- 405.725 Effect of expedited appeals process agreement.

### Subpart I [Reserved]

### Subpart J—Payment of Certain Travel Expenses

- 405.901 Reimbursement of certain travel expenses.

AUTHORITY: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

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### Subpart A—Introduction, General Description, and Definitions

#### § 405.1 Introduction.

(a) *General.* This part explains our procedures for adjudicating the disability portion of initial claims for entitlement to benefits based on disability under title II of the Social Security Act or for eligibility for supplemental security income payments based on disability or blindness under title XVI of the Act. All adjudicators derive their authority from the Commissioner and have the authority to find facts and, if appropriate, to conduct a fair and impartial hearing in accordance with section 205(b) of the Act.

(b) *Explanation of the administrative review process.* Generally, the administrative review process consists of several steps, which must be requested within certain time periods. The administrative review process steps are:

(1) *Initial determination.* When you claim disability benefits and a period of disability under title II of the Act or eligibility for disability or blindness payments under title XVI of the Act, we will make an initial determination on your claim. See §§ 404.902–.903 and 416.1402–.1403 of this chapter for a description of what is and what is not an initial determination.

(2) *Review of initial determination.* If you are dissatisfied with our initial determination, you may request review by a Federal reviewing official.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with a decision made by the Federal reviewing official, you may request a hearing before an administrative law judge. The administrative law judge's decision becomes our final decision, unless your claim is referred to the Decision Review Board.

(4) *Decision Review Board.* When the Decision Review Board reviews your claim and issues a decision, that decision is our final decision.

(5) *Federal court review.* If you are dissatisfied with our final decision as described in paragraphs (b)(3) and (4) of this section, you may request judicial review by filing an action in Federal district court.

(c) *Nature of the administrative review process—(1) Non-adversarial proceeding.* In making a determination or decision on your claim, we conduct the administrative review process in a non-adversarial manner.

(2) *Evidence considered and right to representation.* Subject to the provisions of §§ 405.331 and 405.430, you may present and we will consider information in support of your claim. We also will consider any relevant information that we have in our records. To help you present your claim to us, you may have someone represent you, including an attorney.

(3) *Evidentiary standards applied.* When we make a determination or decision on your disability claim, we will apply a preponderance of the evidence

standard, except that the Decision Review Board will review findings of fact under the substantial evidence standard.

(4) *Clarity of determination or decision.* When we adjudicate your claim, the notice of our determination or decision will explain in clear and understandable language the specific reasons for allowing or denying your claim.

(5) *Consequences of failing to timely follow this administrative appeals process.* If you do not seek timely review at the next step required by these procedures, you will lose your right to further administrative review and your right to judicial review, unless you can show good cause under § 405.20 for your failure to request timely review.

(d) *Expedited appeals process.* You may use the expedited appeals process if you have no dispute with our findings of fact and our application and interpretation of the controlling law, but you believe that a part of that law is unconstitutional. This process permits you to seek our agreement to allow you to go directly to a Federal district court so that the constitutional issue(s) may be resolved.

**§ 405.5 Definitions.**

As used in this part:

*Act* means the Social Security Act, as amended.

*Administrative appeals judge* means an official, other than an administrative law judge, appointed by the Commissioner to serve on the Decision Review Board.

*Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105 who is employed by the Social Security Administration.

*Board* means Decision Review Board.

*Commissioner* means the Commissioner of Social Security, or his or her designee.

*Date you receive notice* means five days after the date on the notice, unless you show us that you did not receive it within the five-day period.

*Day* means calendar day, unless otherwise indicated.

*Decision* means the decision made by a Federal reviewing official, an administrative law judge, or the Decision Review Board.

*Decision Review Board* means the body comprised of administrative law judges and administrative appeals judges that reviews decisions and dismissal orders by administrative law judges.

*Disability claim or claim* means:

(1) An application for benefits that is based on whether you are disabled under title II of the Act, or

(2) An application for supplemental security income payments that is based on whether you are disabled or blind under title XVI of the Act.

(3) For purposes of this part, the terms “disability claim” or “claim” do not include a continuing disability review or age-18 redetermination.

*Document* includes books, records, correspondence, papers, as well as forms of electronic media such as video tapes, CDs, and DVDs.

*Evidence* means evidence as defined under §§ 404.1512 and 416.912 of this chapter.

*Federal reviewing official* means a Federal official who reviews the initial determination.

*Initial determination* means the determination by the State agency.

*Medical expert* means a medical professional who has the qualifications required by the Commissioner and who provides expertise to disability adjudicators at the initial, Federal reviewing official, and administrative law judge levels of the administrative review process.

*Medical and Vocational Expert System* means the body comprised of medical, psychological, and vocational experts, who have qualifications required by the Commissioner. It provides expertise to disability adjudicators at the initial, Federal reviewing official, and administrative law judge levels of the administrative review process.

*Medical and Vocational Expert Unit* means the body within the Medical and Vocational Expert System that is responsible, in part, for overseeing the national network of medical, psychological, and vocational experts.

*National network* means those medical, psychological, and vocational experts, which may include such experts employed by or under contract with the State agencies, who have the qualifications required by the Commissioner and who, under agreement with the