

## Social Security Administration

## §416.1491

(3) A Federal law is enacted that removes the basis for the holding in a decision of a circuit court that was the subject of an Acquiescence Ruling; or

(4) We subsequently clarify, modify or revoke the regulation or ruling that was the subject of a circuit court holding that we determined conflicts with our interpretation of the Social Security Act or regulations, or we subsequently publish a new regulation(s) addressing an issue(s) not previously included in our regulations when that issue(s) was the subject of a circuit court holding that conflicted with our interpretation of the Social Security Act or regulations and that holding was not compelled by the statute or Constitution.

[63 FR 24933, May 6, 1998]

### REOPENING AND REVISING DETERMINATIONS AND DECISIONS

#### §416.1487 Reopening and revising determinations and decisions.

(a) *General.* Generally, if you are dissatisfied with a determination or decision made in the administrative review process, but do not request further review within the stated time period, you lose your right to further review and that determination or decision becomes final. However, a determination or a decision made in your case which is otherwise final and binding may be reopened and revised by us.

(b) *Procedure for reopening and revision.* We may reopen a final determination or decision on our own initiative, or you may ask that a final determination or a decision to which you were a party be reopened. In either instance, if we reopen the determination or decision, we may revise that determination or decision. The conditions under which we may reopen a previous determination or decision, either on our own initiative or at your request, are explained in §416.1488.

[59 FR 8535, Feb. 23, 1994]

#### §416.1488 Conditions for reopening.

A determination, revised determination, decision, or revised decision may be reopened—

(a) Within 12 months of the date of the notice of the initial determination, for any reason;

(b) Within two years of the date of the notice of the initial determination if we find good cause, as defined in §416.1489, to reopen the case; or

(c) At any time if it was obtained by fraud or similar fault. In determining whether a determination or decision was obtained by fraud or similar fault, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time.

[45 FR 52096, Aug. 5, 1980, as amended at 59 FR 1637, Jan. 12, 1994]

#### §416.1489 Good cause for reopening.

(a) We will find that there is good cause to reopen a determination or decision if—

(1) New and material evidence is furnished;

(2) A clerical error was made; or

(3) The evidence that was considered in making the determination or decision clearly shows on its face that an error was made.

(b) We will not find good cause to reopen your case if the only reason for reopening is a change of legal interpretation or administrative ruling upon which the determination or decision was made.

#### §416.1491 Late completion of timely investigation.

We may revise a determination or decision after the applicable time period in §416.1488(a) or §416.1488(b) expires if we begin an investigation into whether to revise the determination or decision before the applicable time period expires. We may begin the investigation either based on a request by you or by an action on our part. The investigation is a process of gathering facts after a determination or decision has been reopened to determine if a revision of the determination or decision is applicable.

(a) If we have diligently pursued the investigation to its conclusion, we may revise the determination or decision. The revision may be favorable or unfavorable to you. "Diligently pursued"

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means that in light of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if we conclude the investigation and if necessary, revise the determination or decision within 6 months from the date we began the investigation.

(b) If we have not diligently pursued the investigation to its conclusion, we will revise the determination or decision if a revision is applicable and if it will be favorable to you. We will not revise the determination or decision if it will be unfavorable to you.

[49 FR 46370, Nov. 26, 1984; 49 FR 48036, Dec. 10, 1984]

**§416.1492 Notice of revised determination or decision.**

(a) When a determination or decision is revised, notice of the revision will be mailed to the parties at their last known address. The notice will state the basis for the revised determination or decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a determination is revised and the revised determination requires that your benefits be suspended, reduced, or terminated, the notice will inform you of your right to continued payment (see §416.1336 and the exceptions set out in §416.1337) and of your right of reconsideration.

(c) If a determination is revised and the revised determination does not require that your benefits be suspended, reduced, or terminated, the notice will inform you of your right to a hearing before an administrative law judge.

(d) If a reconsidered determination that you are blind or disabled, based on medical factors, is reopened for the purpose of being revised, you will be notified, in writing, of the proposed revision and of your right to request that a disability hearing be held before a revised reconsidered determination is issued. If a revised reconsidered determination is issued, you may request a hearing before an administrative law judge.

(e) If an administrative law judge or the Appeals Council proposes to revise a decision, and the revision would be

based on evidence not included in the record on which the prior decision was based, you and any other parties to the decision will be notified, in writing, of the proposed action and of your right to request that a hearing be held before any further action is taken. If a revised decision is issued by an administrative law judge, you and any other party may request that it be reviewed by the Appeals Council, or the Appeals Council may review the decision on its own initiative.

(f) If an administrative law judge or the Appeals Council proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, you and any other parties to the decision will be notified, in writing, of the proposed action. If a revised decision is issued by an administrative law judge, you and any other party may request that it be reviewed by the Appeals Council, or the Appeals Council may review the decision on its own initiative.

(g) An administrative law judge may, in connection with a valid request for a hearing, propose to reopen an issue other than the issue on which the request for a hearing was based. The administrative law judge will follow the time limits for reopenings set out in §416.1488. The administrative law judge shall mail to the parties at their last known address a notice of the reopening.

[45 FR 52096, Aug. 5, 1980, as amended at 51 FR 308, Jan. 3, 1986]

**§416.1493 Effect of revised determination or decision.**

A revised determination or decision is binding unless—

(a) You or a party to the revised determination file a written request for a reconsideration or a hearing;

(b) You or another party to the revised decision file, as appropriate, a request for review by the Appeals Council or a hearing;

(c) The Appeals Council reviews the revised decision; or

(d) The revised determination or decision is further revised.