

dates for initial inspection thresholds. This AD uses flight cycles.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Refer to EASA AD 2010-0097, dated May 26, 2010, for related information.

(j) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: alan.strom@faa.gov; telephone (781) 238-7143; fax (781) 238-7199.

Definition

(k) For the purpose of this AD, an affected blade is a blade listed in Table 1 of this AD that has accumulated cycles within 100 cycles, of the initial inspection thresholds in Table 1 of this AD.

Material Incorporated by Reference

(l) You must use Rolls-Royce plc Alert Service Bulletin No. RB.211-72-AG244, Revision 1, dated January 26, 2010, Appendix 1, Appendix 2, and Appendices 3A through 3F of that ASB, to do the actions required by this AD.

(1) For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 1332 242424; fax 44 1332 249936; e-mail: tech.help@rolls-royce.com.

(2) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Burlington, Massachusetts, on April 1, 2011.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, 416, and 422

[Docket No. SSA-2008-0015]

RIN 0960-AG80

Eliminating the Decision Review Board

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are eliminating the Decision Review Board (DRB) portions of part 405 of our rules, which we currently use as the final step in our administrative review process for adjudicating initial disability claims in

our Boston region. As of the effective date of this regulation, we will replace the DRB step with review by the Appeals Council. The Appeals Council will follow most of the rules in parts 404 and 416 that we use in the rest of the country to adjudicate disability claims at the Appeals Council level, with some differences needed to accommodate the rules that govern administrative law judge (ALJ) hearings in the Boston region. We will also authorize attorney advisors in the Boston region to conduct certain prehearing proceedings and make fully favorable decisions as they do in the rest of the country. We are making these changes to improve service to claimants and to increase consistency in our program rules.

DATES: These final rules are effective June 13, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Kryglik, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-3735 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2006, we published final rules in the **Federal Register** that implemented a number of changes in our process for handling initial disability claims.¹ We referred to those regulations collectively as the Disability Service Improvement process (DSI). We intended DSI to improve the way we handle initial disability claims. DSI added rules that implemented a Quick Disability Determination (QDD) process at the initial level of our administrative review process. It also replaced the reconsideration step of the administrative review process with review by a Federal Reviewing Official (FedRO), established the Office of Medical and Vocational Expertise (OMVE), and made changes to some of the procedures in our ALJ hearing-level process. DSI also eliminated review by the Appeals Council, the final step in our administrative review process. We replaced the Appeals Council with the DRB, which reviewed certain ALJ decisions before those decisions became final. On August 1, 2006, we implemented the DSI rules in our Boston region, which consists of the

States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. At that time, we planned to implement the DSI rules in our remaining regions over a period of several years.

We have continually monitored the DSI process and made appropriate changes when necessary. For example, we published final rules on September 6, 2007, that implemented the QDD process nationally.² In other final rules, we suspended new claims processing through the Office of the Federal Reviewing Official (OFedRO) and the OMVE under subpart C of part 405 on March 23, 2008, so that we could reallocate those resources to reduce the backlog at the ALJ hearing level.³ In November 2008, the OFedRO issued a decision on the last of the claims it had accepted for review.⁴ Thus, in accordance with our March 2008 final rules, the States in the Boston region returned to some of the processes they followed before August 2006, including using either the process for reconsideration of an initial determination in 20 CFR 404.907 and 416.1407 or the testing procedures in 20 CFR 404.906 and 416.1406.

On December 4, 2009, we published a notice of proposed rulemaking (NPRM), *Reestablishing Uniform National Disability Adjudication Provisions*, which proposed to eliminate DSI and return the Boston region to the rules in parts 404 and 416 that we use to adjudicate disability claims in the rest of the country.⁵ We are adopting some of our proposed revisions in these final rules.

Explanation of Changes

In these final rules, we are eliminating the DRB and restoring the Boston region to most of the same rules and procedures at the Appeals Council level under parts 404 and 416 that we currently follow in the rest of the country. We will continue to use our rules about hearings before ALJs under part 405 in the Boston region, including our rules that provide 75-day notice of a hearing and require a claimant to submit all evidence 5 days prior to his or her hearing unless he or she shows good cause. We are eliminating the existing rules that require claimants to ask an ALJ to vacate the ALJ's dismissal of a hearing request. Instead, under our new rules, claimants may appeal an ALJ's dismissal of a hearing request

² 72 FR 51173.

³ 73 FR 2411 (Jan. 15, 2008), corrected at 73 FR 10381 (Feb. 27, 2008).

⁴ 73 FR at 2412.

⁵ 74 FR 63688.

¹ 71 FR 16424. Many of the changes are found in 20 CFR part 405.

directly to the Appeals Council, as is our current practice in the rest of the country.

Although we closed a claimant's official record once an ALJ issued his or her decision under the DSI rules,⁶ the ALJ could consider new evidence submitted afterwards under certain conditions.⁷ The DRB could also consider new evidence under certain conditions. In these final rules, we are eliminating the rule that allowed an ALJ to consider new evidence and adding final section 405.401, which restricts the conditions under which the Appeals Council can accept new evidence in DSI claims. If a claimant appeals an ALJ's dismissal of a hearing request, the Appeals Council will consider additional evidence about the dismissal and decide whether it provides a basis for granting review, as also described in final section 405.401.

With the other changes that we have already made to the DSI process, we no longer need many of the DSI rules in part 405 and are removing references to the FedRO from our rules. These final rules do not affect our Disability Prototype and Single Decisionmaker demonstration projects.

The DRB has not functioned as we originally intended; its workload has grown quickly and become overwhelming. We had intended to use an automated predictive model to select the most error-prone cases for DRB review. However, because we were unable to implement this predictive model, the DRB processed 100% of the unfavorable and partially favorable decisions, requiring significantly more resources than we had anticipated.

The DRB is composed of selected ALJs and administrative appeals judges from the Appeals Council. As members of the DRB, they were unavailable for their regular work, and our efforts to reduce the hearing backlog suffered. Before we implemented DSI, requests for review from the Boston region represented a small fraction of the Appeals Council's total requests for review. Because the DRB processed 100% of the unfavorable and partially favorable cases, there were more cases to review. At the same time, we had an increased number of requests for review by the Appeals Council in other areas of the country as we continued to work down our disability hearings backlog and increased the number of ALJ adjudications nationwide. In fiscal year (FY) 2010, the Appeals Council received 20% more requests for review than in

FY 2009, up from 106,965 in FY 2009 to 128,703 in FY 2010.

The DRB's workload also reduced needed resources at the ALJ hearing level, as those ALJs who worked full-time on the DRB were unavailable to hold hearings. If we continued the DRB, we would need to assign even more ALJs to the DRB's workload as the number of DRB receipts rose due to our hearings backlog reduction plan. Consequently, the continued use of the DRB adversely affected our ability to reduce the hearings backlog.

We also are adding a new section 405.342 to allow attorney advisors to conduct prehearing proceedings and issue fully favorable decisions on cases that arise in the Boston region in the same manner as they do in the rest of the country. In our proposed rules, we proposed to follow in the Boston region the same hearings-level procedures we use in the rest of the country, including the rules that apply to our attorney advisor program. Even though these final rules do not adopt for the Boston region all of the hearings-level procedures we use in the rest of the country, we are adding this rule to help us reduce the backlog of cases awaiting a hearing.

Conforming Changes

We are making a number of conforming changes to sections in parts 404, 405, 416, and 422 to reflect this removal of the DRB rules. Some sections in these final rules differ from the language we proposed in the December 4, 2009 NPRM because these final rules retain the part 405 rules about the ALJ hearing level and include changes made after that date by our final rules "Disability Determinations by State Agency Disability Examiners," which we published in the **Federal Register** on October 13, 2010.⁸ We have already published final rules in parts 404 and 416 that either removed some aspects of the DSI process or extended them nationally.⁹ With the changes to the DSI process in this final rule, we are making a number of conforming changes consistent with the 2010 final rules.

Technical Change

We also are making a technical change to the heading of 20 CFR 416.926(e). The former heading was "Responsibility for determining medical equivalence." We are changing the heading to "Who is responsible for determining medical equivalence?" This

⁸ 75 FR 62676.

⁹ As stated above, under the final rules we published in March 2008 that ended the FedRO and OMVE initiatives, subpart C of part 405 is no longer in effect. See 20 CFR 405.10(d).

change will make the heading consistent with its counterpart in 20 CFR 404.1526(e) and the format of headings in surrounding sections.

Public Comments

We published an NPRM in the **Federal Register** on December 4, 2009, and we gave the public 60 days to comment on it.¹⁰ The comment period closed on February 2, 2010. We received comments from six individuals and organizations. The comments are available for public viewing at <http://www.regulations.gov>. The commenters supported most of the proposed changes but were concerned about three issues, which we discuss below. We carefully considered the comments. Because some of the comments were long, we have condensed, summarized, and paraphrased them. We have tried to summarize the commenters' views accurately, and to respond to the significant issues raised by the commenters that were within the scope of these rules.

Comment: Several of the commenters wanted attorney advisors in our Office of Disability Adjudication and Review to be able to conduct prehearing proceedings and issue fully favorable decisions in the Boston region as they do in the rest of the country.¹¹ These commenters noted that we precluded attorney advisors from deciding DSI cases.

Response: We are adopting this comment. As the commenters correctly noted, the attorney advisor program is available only to disability claims processed under parts 404 and 416 of our rules, and it does not apply to claims processed under the DSI rules in part 405.¹² We agree with the commenters that we should extend the attorney advisor prehearing process to claims processed in the Boston region as we continue our efforts to reduce the number of disability claims that are awaiting a hearing. Therefore, beginning on the effective date of these final rules, we will allow attorney advisors to conduct prehearing proceedings and issue fully favorable decisions on cases that arise in the Boston region in the same manner as they do in the rest of the country. We are adding this authority in new section 405.342.

Comment: Most of the commenters asked us to extend DSI's 75-day advance notice of a hearing rule in 20 CFR 405.315 to our national rules in 20 CFR 404.938 and 416.1438, which require 20 days advance notice.

¹⁰ 74 FR 63688.

¹¹ See 20 CFR 404.942 and 416.1442.

¹² 73 FR 11349, 11350 (March 3, 2008).

⁶ Current 20 CFR 405.360.

⁷ Current 20 CFR 405.373.

Response: We are not adopting this comment. The rules we proposed on December 4, 2009 addressed only rule changes related to our proposal to eliminate the remaining DSI rules in part 405 of our rules. The commenters' suggestion would make a substantive change to our rules in parts 404 and 416, which is beyond the scope of this rulemaking. We issued for public comment a separate NPRM that proposed to make several substantive changes to our rules in parts 404 and 416, including the change the commenters recommended, on October 29, 2007.¹³ We will consider the commenters' suggestion in the context of that rulemaking proceeding.

Comment: All of the commenters expressed concern about our plan to transfer cases pending at the DRB to the Appeals Council on the effective date of these final rules. The commenters believed that claimants whose cases we would transfer would be disadvantaged because they would have to wait longer for the Appeals Council to take action than DSI's 90-day limit for DRB review. Some commenters believed that this proposed procedure would be especially problematic in cases that involve partially favorable decisions. Under DSI, the DRB reviews those decisions before we effectuate them, while in non-DSI States, we first effectuate a partially favorable decision before we send it to the Appeals Council to consider the claimant's request for review. Some of the commenters suggested that we handle pending DRB cases as we handled cases pending review by a FedRO when we suspended FedRO case reviews in 2008. In that situation, we stopped sending new cases for FedRO review but kept the rules for such review in place until a FedRO issued a decision on the last pending case.

Response: We understand the commenters' concerns about longer processing times at the Appeals Council. To help allay concerns about processing times at the Appeals Council, we will put the transferred cases at the front of the Appeals Council queue. We believe that this approach

will result in the best use of our resources and will result in the best service to claimants.

We decided not to use a process similar to the one we used for FedRO cases because the rapid growth in the DRB's workload, the unanticipated need for adjudicative resources, and the impact on other workloads both at the ALJ hearing level and at the Appeals Council are adversely affecting our ability to serve the public. Transferring all pending DRB cases to the Appeals Council on the effective date of these rules will help us use our resources more effectively and provide the best service to claimants.

We will process partially favorable ALJ decisions transferred to the Appeals Council under these final rules in the following manner. The Appeals Council will send partially favorable ALJ decisions that it receives from the DRB to a processing component, and we will effectuate these decisions in the same manner that we do for cases that arise in other parts of the country. In addition, the Appeals Council will notify those claimants whose claims we have transferred that we have deemed that they have filed a request for Appeals Council review of the ALJ's decision. That notice will inform the claimants that they have a right to file a written request for withdrawal of the deemed request for review. If the Appeals Council grants review of a partially favorable ALJ decision, it will review the entire record and may affirm, modify, or reverse the ALJ's decision.

When will we start to use these rules?

We will start to use these final rules on the effective date stated above. Until then, we will continue to use our current rules.

On the effective date of these final rules, we will transfer all cases pending before the DRB to the Appeals Council and treat these cases as if the claimant had requested Appeals Council review of the hearing decision. The Appeals Council will notify each of these claimants that we have deemed that he or she has filed a request for Appeals

Council review of the ALJ's decision and that he or she has the right to file a written request for withdrawal of the deemed request for Appeals Council review. For cases in which a claimant has appealed a dismissal by an ALJ under the procedures in part 405, we will treat the pending request as a request for Appeals Council review of the ALJ's dismissal. We will transfer to the Appeals Council any cases remanded by a Federal court that we assigned to the DRB. We will immediately begin effectuating partially favorable decisions when we forward them for Appeals Council review.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 135653

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed them.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain reporting requirements in the regulation sections listed below. For some sections in these rules, we previously accounted for the public reporting burdens in the Information Collection Requests for the various forms the public uses to submit the information to us. Consequently, we are not reporting those sections below. The sections below pose new public reporting burdens not covered by an existing OMB-approved form, and we provide burden estimates for them.

Regulation Section 20 CFR	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
405.1(b)(5), 405.372(b).	If applicants have pursued their claims through all levels of the administrative process and are dissatisfied with SSA's final decision, they (or parties acting on their behalf) may request judicial review by filing an action in Federal district court within the stated time period.	833	1	30	417

¹³ 72 FR 61218.

Regulation Section 20 CFR	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
405.1(c)(2)	Applicants appealing SSA's decisions must provide evidence to support their claims.	5,310	1	10	885
405.20	If one wants an extension past the deadline to request administrative or judicial review, one must establish there is good cause for missing the deadline.	5,310	1	10	885
405.372(c)	If applicants want to submit additional evidence to the Appeals Council, the Council will only consider it if it meets certain criteria.	5,310	1	10	885
405.505	If one files for an extension of time to file a civil action, one must file that request with the Appeals Council.	833	1	30	417
Total		17,596			3,489

We are also seeking comment on our information collections in our current rule sections listed below. We are

updating the public reporting burdens for the information collection requirements under OMB control

number 0960–0710. The following are updated burden estimates:

Regulation section 20 CFR	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.961, 416.1461, 405.330, and 405.366.	An individual may request a pre-hearing or post-hearing conference.	12,220	1	20	4,073
404.950, 416.1450, and 405.332.	An individual has the right to present evidence at a hearing, including the subpoena process.	1,040	1	20	347
404.949 and 416.1449	An individual (or designated representative) may appear before an administrative law judge to present an oral or written statement of a case.	2,868	1	60	2,868
405.334	An individual (or designated representative) may, at any time before the hearing begins, submit a pre-hearing statement with an explanation of the alleged disability.	20	1	60	20
404.957, 416.1457, and 405.380.	Explain the conditions under which an administrative law judge may dismiss a request for hearing.	21,041	1	10	3,507
405.381	Outlines the contents of the notice of dismissal and the procedures for requesting Appeals Council review of the dismissal decision.	37	1	30	19
405.401	Explains procedures for requesting review of a hearing decision or a dismissal of a hearing request and the conditions under which the Appeals Council will consider new evidence.	5,310	1	10	885
404.982 & 416.1482 ..	Pertains to the extension of time for filing an action in a Federal district court.	1,687	1	30	844
404.987 & 404.988 and 416.1487 & 416.1488 and 405.601.	Outlines the conditions under which we may reopen a final decision or determination.	12,425	1	30	6,213
Totals		56,648			18,776

We submitted an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, E-mail address: OIRA_Submission@omb.eop.gov.
Social Security Administration, Attn: Reports Clearance Officer, 1333 Annex, 6401 Security Blvd, Baltimore, MD 21235–0001, Fax Number: 410–965–6400, E-mail: OPLM.RCO@ssa.gov.

You can submit comments until July 5, 2011, which is 60 days after the

publication of these rules. However, your comments will be most useful if you send them to us by June 2, 2011, which is 30 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by e-mail or fax.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social

Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 405

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Public assistance programs; Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI).

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public Assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure; Organization and functions (Government agencies); Reporting and recordkeeping requirements; Social Security.

Dated: April 26, 2011.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we amend subparts J, P, and Q of part 404, part 405, subparts I, J, and N of part 416, and subparts B and C of part 422 of chapter III of title 20 Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart J—[Amended]

- 1. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

- 2. Amend § 404.906 by removing the third and fourth sentences of paragraph (b)(4).

- 3. Amend § 404.930 by removing paragraph (c).

Subpart P—[Amended]

- 4. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b), and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b), and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

- 5. Amend § 404.1502 by revising the definition of “nonexamining source” to read as follows:

§ 404.1502 General definitions and terms for this subpart.

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts or psychological experts we consult. *See* § 404.1527.

- 6. Amend § 404.1512 by revising paragraph (b)(8) to read as follows:

§ 404.1512 Evidence.

(b) * * *

(8) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, or other medical specialists, and opinions expressed by medical experts or psychological experts that we consult based on their review of the evidence in your case record. *See* §§ 404.1527(f)(2)–(3).

- 7. Amend § 404.1513 by revising the first sentence of paragraph (c) to read as follows:

§ 404.1513 Medical and other evidence of your impairment(s).

(c) * * * At the administrative law judge and Appeals Council levels, we will consider residual functional capacity assessments made by State agency medical and psychological consultants, and other program physicians and psychologists to be “statements about what you can still do” made by nonexamining physicians and

psychologists based on their review of the evidence in the case record. * * *

- 8. Amend § 404.1519k by revising paragraph (a) to read as follows:

§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.

(a) The rate of payment for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. *See* §§ 404.1624 and 404.1626 of this part.

- 9. Amend § 404.1519m by revising the third sentence to read as follows:

§ 404.1519m Diagnostic tests or procedures.

* * * A State agency medical consultant must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. * * *

- 10. Amend § 404.1519s by revising paragraph (c) to read as follows:

§ 404.1519s Authorizing and monitoring the consultative examination.

(c) Consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

- 11. Amend § 404.1520a by revising the third sentence and removing the fourth sentence of paragraph (d)(2), and revising paragraphs (e) introductory text, (e)(1), (e)(4), and (e)(5) to read as follows:

§ 404.1520a Evaluation of mental impairments.

(d) * * *

(2) * * * We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process, or in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision). * * *

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record

how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), we will document application of the technique in the decision. The following rules apply:

(1) When a State agency medical or psychological consultant makes the determination together with a State agency disability examiner at the initial or reconsideration level of the administrative review process as provided in § 404.1615(c)(1) of this part, the State agency medical or psychological consultant has overall responsibility for assessing medical severity. A State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence.

* * * * *

(4) At the administrative law judge hearing and Appeals Council levels, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(5) If the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 404.941 of this part, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 404.941(d) or (e) of this part. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

■ 12. Amend § 404.1526 by revising the first sentence of paragraph (d) and paragraph (e) to read as follows:

§ 404.1526 Medical equivalence.

* * * * *

(d) *Who is a designated medical or psychological consultant?* A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations. * * *

(e) *Who is responsible for determining medical equivalence?* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 404.1616 of this part) has the overall responsibility for determining medical equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining medical equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 404.918 of this part, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the administrative law judge or Appeals Council level, the responsibility for deciding medical equivalence rests with the administrative law judge or Appeals Council.

■ 13. Amend § 404.1527 by revising the first sentence of paragraph (f)(1) and removing paragraph (f)(4), to read as follows:

§ 404.1527 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant may make the determination of disability together with a State agency disability examiner or provide one or more medical opinions to a State agency disability examiner when the disability examiner makes the initial or reconsideration determination alone (see § 404.1615(c) of this part).

* * *

* * * * *

■ 14. Amend § 404.1529 by revising the third and fifth sentences of paragraph (b) to read as follows:

§ 404.1529 How we evaluate symptoms, including pain.

* * * * *

(b) * * * In cases decided by a State agency (except in disability hearings under §§ 404.914 through 404.918 of this part and in fully favorable determinations made by State agency disability examiners alone under § 404.1615(c)(3) of this part), a State agency medical or psychological consultant or other medical or psychological consultant designated by the Commissioner directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * * At the administrative law judge hearing or Appeals Council level of the administrative review process, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *

■ 15. Amend § 404.1546 by revising the first sentence of paragraph (a) and paragraph (c), and removing paragraph (d), to read as follows:

§ 404.1546 Responsibility for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency medical or psychological consultant and a State agency disability examiner make the disability determination as provided in § 404.1615(c)(1) of this part, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity. * * *

* * * * *

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level or at the Appeals Council review level, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

Subpart Q—[Amended]

■ 16. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

- 17. Amend § 404.1601 by removing the third sentence of the introductory text.
- 18. Amend § 404.1616 by removing the third sentence of paragraph (b), and removing paragraph (e)(4).
- 19. Amend § 404.1624 by revising the first sentence to read as follows:

§ 404.1624 Medical and other purchased services.

The State will determine the rates of payment for purchasing medical or other services necessary to make determinations of disability. * * *

PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS

- 20. The authority citation for part 405 continues to read as follows:

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).

Subpart A—[Amended]

- 21. Amend § 405.1 by adding a third sentence to paragraph (b)(1) and revising paragraphs (b)(2), (b)(3), (b)(4), (b)(5), the first sentence of (c)(2), and (c)(3) to read as follows:

§ 405.1 Introduction.

* * * * *

(b) * * *

(1) * * * We use the procedures in part 404 subpart J of this chapter, part 416 subpart N of this chapter, or both, for your initial determination.

(2) *Reconsideration.* If you are dissatisfied with the initial determination, you may ask us to reconsider it. We use the procedures in part 404 subpart J of this chapter, part 416 subpart N of this chapter, or both, for your reconsideration determination. You must follow the procedure in §§ 404.909 or 416.1409 of this chapter to request reconsideration.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with the reconsidered determination, you may request a hearing before an administrative law judge. The administrative law judge will use the procedures in subpart D of this part.

(4) *Appeals Council review.* If you or any other party to the hearing is dissatisfied with the administrative law judge's decision or with the administrative law judge's dismissal of a hearing request, you may request that the Appeals Council review that action. The Appeals Council also may initiate review on its own motion. The Appeals

Council will use the procedures in subparts E through G of this part for its review.

(5) *Federal court review.* If you have pursued your claim through all levels of our administrative process and are dissatisfied with our final decision, you may request judicial review by filing an action in Federal district court.

(c) * * *

(2) *Evidence considered and right to representation.* Subject to §§ 405.331 and 405.430, you may present and we will consider information in support of your claim. * * *

(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 Appeals Council will review findings of fact under the substantial evidence standard.

* * * * *

- 22. Revise § 405.5 to read as follows:

§ 405.5 Definitions.

As used in this part:

Act means the Social Security Act, as amended.

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.

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 an administrative law judge, attorney advisor, or the Appeals Council.

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.

Preponderance of the evidence means such relevant evidence that as a whole

shows that the existence of the fact to be proven is more likely than not.

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Vacate means to set aside a previous action.

We, us, or our refers to the Social Security Administration.

You or your refers to the person who has filed a disability claim and, where appropriate, his or her authorized representative.

- 23. Remove and reserve § 405.10.

- 24. Amend § 405.20 by revising the first sentence of paragraph (a) to read as follows:

§ 405.20 Good cause for extending deadlines.

(a) If you want us to extend the deadline to request administrative or judicial review, you must establish that there is good cause for missing the deadline. * * *

* * * * *

Subparts B and C— [Removed and Reserved]

- 25. Remove and reserve subparts B and C.

Subpart D—[Amended]

- 26. Amend § 405.301 by revising the first sentence of paragraph (a) to read as follows:

§ 405.301 Hearing before an administrative law judge—general.

(a) This subpart explains what to do if you are dissatisfied with a reconsidered determination or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter. * * *

* * * * *

- 27. Revise § 405.305 to read as follows:

§ 405.305 Availability of a hearing before an administrative law judge.

You may request a hearing before an administrative law judge if you are dissatisfied with the reconsidered determination on your disability claim or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of §§ 404.906(b)(4) or 416.1406(b)(4) of this chapter.

- 28. Amend § 405.310 by revising paragraph (a)(3) and the first sentence of paragraph (b) to read as follows:

§ 405.310 How to request a hearing before an administrative law judge.

(a) *Written request.* * * *

(3) The specific reasons you disagree with the previous determination,

* * * * *

(b) *Time limit for filing request.* An administrative law judge will conduct a hearing if you request one in writing no later than 60 days after the date you receive notice of the reconsidered determination or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter (or within the extended time period if we extend the time as provided in paragraph (d) of this section). * * *

* * * * *

■ 29. Amend § 405.320 by removing the last sentence of paragraph (b).

■ 30. Add § 405.342 to read as follows:

§ 405.342 Prehearing proceedings and decisions by attorney advisors.

After a hearing is requested but before it is held, an attorney advisor may conduct prehearing proceedings as set out in §§ 404.942(c) or 416.1442(c) of this chapter. If, after the completion of these proceedings, we can make a decision that is fully favorable to you and all other parties based on the preponderance of the evidence, an attorney advisor, instead of an administrative law judge, may issue the decision. We use the procedures §§ 404.942 or 416.1442 of this chapter when we conduct prehearing proceedings or issue decisions under this section.

■ 31. Amend § 405.360 by revising the last sentence to read as follows:

§ 405.360 Official record.

* * * Subject to § 405.401(c), the official record closes once the administrative law judge issues his or her decision regardless of whether it becomes our final decision.

■ 32. Amend § 405.365 by revising paragraph (a)(2) to read as follows:

§ 405.365 Consolidated hearing before an administrative law judge.

(a) * * *

(2) If the administrative law judge consolidates the claims, he or she will decide both claims, even if we have not yet made an initial determination or a reconsidered determination on the other claim.

* * * * *

■ 33. Amend § 405.370 by removing the third sentence of paragraph (a) and

revising the third sentence of paragraph (b) to read as follows:

§ 405.370 Decisions by the administrative law judge.

* * * * *

(b) * * * Within five days after the hearing, if there are no subsequent changes to the analysis in the oral decision, we will send you a written decision that incorporates such oral decision by reference. * * *

■ 34. Amend § 405.371 by revising the second and third sentences to read as follows:

§ 405.371 Notice of the decision of an administrative law judge.

* * * The notice accompanying the decision will explain your right to representation. It also will explain your right to request review of the decision by the Appeals Council.

■ 35. Revise § 405.372 to read as follows:

§ 405.372 Effect of an administrative law judge's decision.

The decision of the administrative law judge is binding on all parties to the hearing unless—

(a) You or another party requests a review of the decision by the Appeals Council within the stated time period, and the Appeals Council reviews your case;

(b) You or another party requests a review of the decision by the Appeals Council within the stated time period, the Appeals Council denies your request for review, you seek judicial review of your case by filing an action in a Federal district court, and the Federal court reverses the decision or remands it for further administrative action;

(c) An administrative law judge or the Appeals Council revises the decision under § 405.601 of this part;

(d) You use the expedited appeals process described in §§ 404.923 through 404.928 or 416.1423 through 416.1428 of this chapter;

(e) The ALJ decided the case after a Federal court remanded your case to us, and the Appeals Council follows the procedures in §§ 404.984 or 416.1484 of this chapter to assume jurisdiction of your case; or

(f) The Appeals Council reviews the claim on its own motion.

■ 36. Remove and reserve § 405.373.

■ 37. Amend § 405.381 by revising the second and third sentences to read as follows:

§ 405.381 Notice of dismissal of a request for a hearing before an administrative law judge.

* * * The notice will tell you that you may ask the Appeals Council to

review the dismissal and will explain your right to representation. Your request for review by the Appeals Council must be in writing and must be filed within 60 days after the date that you receive notice of the dismissal.

■ 38. Remove and reserve § 405.382.

■ 39. Revise § 405.383 to read as follows:

§ 405.383 Effect of dismissal of a request for a hearing before an administrative law judge.

The administrative law judge's dismissal of a request for a hearing is binding and not subject to further review, unless an administrative law judge or the Appeals Council vacates it.

Subpart E—[Amended]

■ 40. Revise the heading of subpart E of part 405 to read as follows:

Subpart E—Appeals Council Review

■ 41. Revise § 405.401 to read as follows:

§ 405.401 Appeals Council review.

(a) If you (or any other party) are dissatisfied with the hearing decision or with the dismissal of a hearing request under this part, you may request that the Appeals Council review that action. The Appeals Council may also initiate review on its own motion. Except as specifically provided in this subpart, we will follow our rules for Appeals Council review in §§ 404.966 through 404.984 and 416.1466 through 416.1484 of this chapter.

(b) If you seek Appeals Council review, you must file your request within the time period and in accordance with the procedures in §§ 404.968 and 416.1468 of this chapter. The Appeals Council will consider additional evidence only in accordance with paragraph (c) of this section.

(c) If you submit additional evidence, the Appeals Council will consider the additional evidence only where it relates to the period on or before the date of the hearing decision, and only if you show that there is a reasonable probability that the evidence, alone or when considered with the other evidence of record, would change the outcome of the decision, and

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

■ 42. Remove and reserve §§ 405.405, 405.410, 405.415, 405.420, 405.425, and 405.427.

■ 43. Revise § 405.430 to read as follows:

§ 405.430 Record before the Appeals Council.

Subject to § 405.401(c), the record is closed as of the date of the administrative law judge's decision, and the Appeals Council will base its action on the same evidence that was before the administrative law judge.

■ 44. Remove and reserve §§ 405.440, 405.445, and 405.450.

Subpart F—[Amended]

■ 45. Amend § 405.505 by revising the third sentence to read as follows:

§ 405.505 Extension of time to file a civil action.

* * * You must file your request with the Appeals Council. * * *

■ 46. Revise § 405.510 to read as follows:

§ 405.510 Claims remanded by a Federal court.

When a Federal court remands a claim decided under this part for further agency consideration, the Appeals Council may make a decision based upon the evidence in the record, or it may remand the claim to an administrative law judge. If the Appeals Council remands a claim to an administrative law judge, the Appeals Council will send you a notice of remand.

Subpart H — [Removed and Reserved]

■ 47. Remove and reserve subpart H.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 48. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)-(e), 14(a), and 15, Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 49. Amend § 416.902 by revising the definition of “nonexamining source” to read as follows:

§ 416.902 General definitions and terms for this subpart.

* * * * *

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts or psychological experts we consult. See § 416.927.

* * * * *

■ 50. Amend § 416.912 by revising paragraph (b)(8) to read as follows:

§ 416.912 Evidence.

* * * * *

(b) * * *

(8) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, or other medical specialists, and opinions expressed by medical experts or psychological experts that we consult based on their review of the evidence in your case record. See §§ 416.927(f)(2)-(3).

* * * * *

■ 51. Amend § 416.913 by revising the first sentence of paragraph (c) to read as follows:

§ 416.913 Medical and other evidence of your impairment(s).

* * * * *

(c) * * * At the administrative law judge and Appeals Council levels, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be “statements about what you can still do” made by nonexamining physicians and psychologists based on their review of the evidence in the case record. * * *

* * * * *

■ 52. Amend § 416.919k by revising paragraph (a) to read as follows:

§ 416.919k Purchase of medical examinations, laboratory tests, and other services.

* * * * *

(a) The rate of payment for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service.

See §§ 416.1024 and 416.1026 of this part.

* * * * *

■ 53. Amend § 416.919m by revising the third sentence to read as follows:

§ 416.919m Diagnostic tests or procedures.

* * * A State agency medical consultant must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. * * *

■ 54. Amend § 416.919s by revising paragraph (c) to read as follows:

§ 416.919s Authorizing and monitoring the consultative examination.

* * * * *

(c) Consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

* * * * *

■ 55. Amend § 416.920a by revising the third sentence and removing the fourth sentence of paragraph (d)(2) and revising paragraphs (e) introductory text, (e)(1), (e)(4), and (e)(5) to read as follows:

§ 416.920a Evaluation of mental impairments.

* * * * *

(d) * * *

(2) * * * We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process, or in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision). * * *

* * * * *

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), we will document application of the technique in the decision. The following rules apply:

(1) When a State agency medical or psychological consultant makes the determination together with a State agency disability examiner at the initial or reconsideration level of the administrative review process as provided in § 416.1015(c)(1) of this part, the State agency medical or psychological consultant has overall

responsibility for assessing medical severity. A State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence.

* * * * *

(4) At the administrative law judge hearing and Appeals Council levels, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(5) If the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 416.1441 of this part, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 416.1441(d) or (e) of this part. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

■ 56. Amend § 416.924 by revising paragraph (g) to read as follows:

§ 416.924 How we determine disability for children.

* * * * *

(g) *How we will explain our findings.* When we make an initial or reconsidered determination whether you are disabled under this section or whether your disability continues under § 416.994a (except when a disability hearing officer makes the reconsideration determination), we will complete a standard form, Form SSA-538, Childhood Disability Evaluation Form. The form outlines the steps of the sequential evaluation process for

individuals who have not attained age 18. The State agency medical or psychological consultant (see § 416.1016 of this part) or other designee of the Commissioner has overall responsibility for the content of the form and must sign the form to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. Disability hearing officers, administrative law judges, and the administrative appeals judges on the Appeals Council (when the Appeals Council makes a decision) will not complete the form but will indicate their findings at each step of the sequential evaluation process in their determinations or decisions.

■ 57. Amend § 416.926 by revising the first sentence of paragraph (d) and revising paragraph (e) to read as follows:

§ 416.926 Medical equivalence for adults and children.

* * * * *

(d) *Who is a designated medical or psychological consultant?* A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations. * * *

(e) *Who is responsible for determining medical equivalence?* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 416.1016 of this part) has the overall responsibility for determining medical equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining medical equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 416.1418 of this part, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the administrative law judge or Appeals Council level, the responsibility for deciding medical equivalence rests with the administrative law judge or Appeals Council.

■ 58. Amend § 416.926a by revising paragraph (n) to read as follows:

§ 416.926a Functional equivalence for children.

* * * * *

(n) *Responsibility for determining functional equivalence.* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 416.1016 of this part) has the overall responsibility for determining functional equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining functional equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 416.1418 of this part, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the administrative law judge or Appeals Council level, the responsibility for deciding functional equivalence rests with the administrative law judge or Appeals Council.

■ 59. Amend § 416.927 by revising the first sentence of paragraph (f)(1) and removing paragraph (f)(4), to read as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant may make the determination of disability together with a State agency disability examiner or provide one or more medical opinions to a State agency disability examiner when the disability examiner makes the initial or reconsideration determination alone (See § 416.1015(c) of this part).

* * *

* * * * *

■ 60. Amend § 416.929 by revising the third and fifth sentences of paragraph (b) to read as follows:

§ 416.929 How we evaluate symptoms, including pain.

* * * * *

(b) * * * In cases decided by a State agency (except in disability hearings under §§ 416.1414 through 416.1418 of this part and in fully favorable determinations made by State agency disability examiners alone under § 416.1015(c)(3) of this part), a State agency medical or psychological consultant or other medical or psychological consultant designated by the Commissioner directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * * At the

administrative law judge hearing or Appeals Council level of the administrative review process, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *

- 61. Amend § 416.946 by revising the first sentence in paragraph (a) and paragraph (c), and removing paragraph (d), to read as follows:

§ 416.946 Responsibility for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency medical or psychological consultant and a State agency disability examiner make the disability determination as provided in § 416.1015(c)(1) of this part, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity. * * *

* * * * *

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level or at the Appeals Council review level, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

Subpart J—[Amended]

- 62. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

- 63. Amend § 416.1001 by removing the third sentence of the introductory text.

- 64. Amend § 416.1016 by removing the third sentence of paragraph (b) and removing paragraph (e)(4).

- 65. Amend § 416.1024 by revising the first sentence to read as follows:

§ 416.1024 Medical and other purchased services.

The State will determine the rates of payment for purchasing medical or other services necessary to make determinations of disability. * * *

Subpart N—[Amended]

- 66. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

- 67. Amend § 416.1406 by removing the third and fourth sentences of paragraph (b)(4).

- 68. Amend § 416.1430 by removing paragraph (c).

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

- 69. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13), and sec. 7213(a)(1)(A) of Pub. L. 108–458.

- 70. Amend § 422.130 by revising the first sentence of paragraph (b) and the second sentence of paragraph (c) to read as follows:

§ 422.130 Claim procedure.

* * * * *

(b) * * * An individual who files an application for monthly benefits, the establishment of a period of disability, a lump-sum death payment, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, either on his own behalf or on behalf of another, must establish by satisfactory evidence the material allegations in his application, except as to earnings shown in the Social Security Administration's records (see subpart H of part 404 of this chapter for evidence requirements in nondisability cases and subpart P of part 404 of this chapter for evidence requirements in disability cases). * * *

(c) * * * Section 404.1503 of this chapter has a discussion of the respective roles of State agencies and the Administration in the making of disability determinations and information regarding initial determinations as to entitlement or termination of entitlement in disability claims. * * *

- 71. Revise § 422.140 to read as follows:

§ 422.140 Reconsideration of initial determination.

If you are dissatisfied with an initial determination with respect to entitlement to monthly benefits, a lump-

sum death payment, a period of disability, a revision of an earnings record, with respect to any other right under title II of the Social Security Act, or with respect to entitlement to hospital insurance benefits or supplementary medical insurance benefits, you may request that we reconsider the initial determination. The information in § 404.1503 of this chapter as to the respective roles of State agencies and the Social Security Administration in making disability determinations is also generally applicable to the reconsideration of initial determinations involving disability. However, in cases in which a disability hearing as described in §§ 404.914 through 404.918 and §§ 416.1414 through 416.1418 of this chapter is available, the reconsidered determination may be issued by a disability hearing officer or the Associate Commissioner for Disability Programs or his or her delegate. After the initial determination has been reconsidered, we will mail you written notice and inform you of your right to a hearing before an administrative law judge (see § 422.201).

Subpart C—[Amended]

- 72. Revise the heading of subpart C of part 422 to read as follows:

Subpart C—Procedures of the Office of Disability Adjudication and Review

- 73. The authority citation for subpart C of part 422 continues to read as follows:

Authority: Secs. 205, 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 421, and 902(a)(5)); 30 U.S.C. 923(b).

- 74. Amend § 422.201 by revising the first and third sentences of the introductory text to read as follows:

§ 422.201 Material included in this subpart.

This subpart describes in general the procedures relating to hearings before an administrative law judge of the Office of Disability Adjudication and Review, review by the Appeals Council of the hearing decision or dismissal, and court review in cases decided under the procedures in parts 404, 405, 408, 410, and 416 of this chapter. * * * Procedures related to hearings before an administrative law judge, review by the Appeals Council, or court review in claims adjudicated under the procedures in part 405 of this chapter are explained in subparts D, E, and F of part 405 of this chapter. * * *

* * * * *

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