



SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2011-0106]

Social Security Ruling, SSR 13-3p

APPEAL OF AN INITIAL MEDICAL DISABILITY CESSATION DETERMINATION OR
DECISION

AGENCY: Social Security Administration

ACTION: Notice of Social Security Ruling (SSR)

SUMMARY: We are giving notice of SSR 13-3p. This SSR changes the period an adjudicator must consider when deciding an appeal of a medical cessation determination. This Ruling also clarifies how this policy applies at the Appeals Council (AC) level when the AC denies a request for review or issues a remand or dismissal order. The adjudicator will consider a beneficiary's disability through the date on which we make the appeal determination or decision.

DATES:

EFFECTIVE DATE: [Insert date of publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Susan Dunigan, Office of Disability Programs,
Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401,
(410)- 966-5671 or TTY (800) 966-5609.

SUPPLEMENTARY INFORMATION: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so under 20 CFR 402.35(b)(1).

Through SSRs, we make available to the public precedential decisions relating to the Federal old age, survivors, disability, supplemental security income, and special veterans benefits programs. We base SSRs on determinations and decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all of our components. 20 CFR 402.35(b)(1)

This SSR will be in effect until we publish a notice in the Federal Register that rescinds it, or publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.004 Social Security—Survivors Insurance; 96.006 Supplemental Security Income; 96.020 Special Benefits for Certain World War II Veterans.)

Dated: February 12, 2013

Michael J. Astrue,
Commissioner of Social Security

POLICY INTERPRETATION RULING

TITLE II: APPEAL OF AN INITIAL MEDICAL DISABILITY CESSATION

DETERMINATION OR DECISION

PURPOSE: This SSR explains how we will review an initial medical cessation determination or decision when we receive a timely request for administrative review of the cessation determination or decision. In this SSR, we are adopting as our nationwide policy the holding in Difford v. Secretary of Health and Human Services, 910 F.2d 1316 (6th Cir. 1990). We have applied the holding in that decision under Acquiescence Ruling (AR) 92-2(6) to cases involving beneficiaries residing in States within the Sixth Circuit (Kentucky, Michigan, Ohio, Tennessee). Because this SSR addresses the issue decided by the Difford court, in this issue of the Federal Register, we are also publishing a notice rescinding AR 92-2(6) as obsolete in accordance with our acquiescence regulations, 20 CFR 404.985(e)(4).¹

CITATIONS: Sections 223(f) of the Social Security Act, as amended; Regulations No. 4, Subpart D, section 404.316; Subpart J, sections 404.902, 404.905; and Subpart P, sections 404.1579, 404.1589, 404.1590, 404.1593, and 404.1594.

¹ This SSR applies only to determinations or decisions finding that a beneficiary is no longer entitled to benefits because the physical or mental impairment on the basis of which the benefits have been paid has ceased, does not exist, or is no longer disabling. We call this type of finding a medical cessation determination or decision. This SSR does not apply to disability cessations based on substantial gainful activity.

PERTINENT HISTORY: Section 223(f) of the Social Security Act (Act) sets forth the standard of review for determining whether an individual's disability has medically ceased. This provision provides, in relevant part, as follows:

“ (f) A recipient of benefits under this title or title XVIII based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(1) substantial evidence which demonstrates that—

(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(B) the individual is now able to engage in substantial gainful activity; or

(2) substantial evidence which—

(A) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity, or

(B) demonstrates that—

(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity; or

(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained

evidence which relates to that determination) which demonstrates that a prior determination was in error.

* * * * *

Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition, which is presented by the individual or secured by the Commissioner of Social Security. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled."

INTRODUCTION

Since Congress enacted section 223(f) of the Act in 1984, we have interpreted the words "now" and "current" in that section of the Act to mean that, generally, when deciding the appeal of a medical cessation, an adjudicator would consider what the beneficiary's condition was at the time of the initial cessation determination. The adjudicator would not consider the beneficiary's condition at the time of the reconsideration or disability hearing officer's determination, the administrative law judge's (ALJ) decision, or the Appeals Council's (AC) decision. If the adjudicator determined that the medical cessation date was appropriate, but evidence also

showed that the beneficiary had again become disabled at any time through the date of his or her determination or decision, as a result of a worsening of an existing impairment or by the onset of a new impairment, the adjudicator would solicit a new application for title II disability benefits. In title XVI cases, a new application is not required if a recipient of supplemental security income payments again becomes disabled while an appeal is pending (20 CFR 416.305(b)).

In Difford, the United States Court of Appeals for the Sixth Circuit interpreted the references to “now” and “current” in section 223(f) of the Act to require that when we review a medical disability cessation determination or decision, we must consider whether the beneficiary was disabled at any time through the date of the adjudicator(s)’s final determination or decision. Under Difford, as applied in AR 92-2(6), when we review a determination or decision that disability has medically ceased, the adjudicator must consider the individual’s disability through the date of his or her determination or decision, rather than determining only whether the individual’s disability had ceased at the time of the initial cessation determination. We are now revising our interpretation of section 223(f) of the Act to adopt the policy contained in Difford AR as our nationwide policy.

In this SSR, we use the term “final decision” to differentiate between the initial cessation determination and the subsequent determination or decision on appeal that becomes administratively final. As used in this Ruling, “final decision” refers to the administrative determination or decision that becomes final because the beneficiary does not request further administrative review, or when the AC issues a decision. “Final decision” does not refer to cases

where the AC denies a request for review or issues remand or dismissal order. At the time an adjudicator makes a determination or decision at the reconsideration or hearing level, the adjudicator does not know if the beneficiary will request an appeal. Therefore, the adjudicator cannot know whether the determination or decision will become the final determination or decision. In implementing this Ruling, we refer to a determination or decision made at any administrative review level as though it will become a final determination or decision.

POLICY INTERPRETATION: This SSR revises our policy to provide that we will use the same timeframe for determinations or decision we make in both title II and title XVI medical disability cessation cases reviewed at the reconsideration and hearings level(s) of our administrative review process. Under the policy we are adopting in this Ruling, the adjudicator reviewing the medical cessation determination or decision will decide whether the beneficiary is under a disability through the date of the adjudicator's determination or decision.

When the AC receives a request for review of a hearing decision, the AC generally considers evidence that relates to the period on or before the date of the ALJ's decision. When deciding whether to grant a request for review of an ALJ's decision in a medical cessation case, the AC will not consider evidence that does not relate to the period on or before the date of the ALJ's decision. If the ALJ correctly applied this Ruling and there is no basis for review on any other issue, the AC will deny the request for review. If the AC grants the request for review, vacates the ALJ's decision and remands the medical cessation case to the ALJ for further proceedings, on remand, the ALJ will apply the provisions of this Ruling. However, in a medical

cessation case when the AC grants review and exercises its authority to issue a decision, then it will determine the beneficiary's disability through the date of the AC decision, which will be our final decision.

In addition, a timely request for administrative review of a disability cessation determination or decision, including cases where we find good cause for late filing, constitutes a protective filing of an application permitting a determination of disability through the date of the final determination or decision on appeal.

Adjudicators use the date of the initial request for review of the disability cessation determination as the filing date for a new period of disability. We establish a new period of disability if the beneficiary again became disabled as a result of a worsening of an existing impairment or by the onset of a new impairment before the date of the determination or decision on appeal, and if all other requirements for establishing a period of disability, including the duration and insured status requirements in title II cases, have been met. If cessation of a prior period of disability is confirmed, a beneficiary will not be found eligible for a subsequent period of disability if he or she did not become disabled again until after the date last insured (as determined after taking account of all prior periods of disability and updates to a claimant's earnings record).

Since this Ruling revises how we consider the title II appeal (or in concurrent cases, the title II portion) of a medical disability cessation case, it eliminates the need for a new claim for

reentitlement in title II cases. The adjudicator will evaluate disability through the date of the appeal determination or decision regarding the beneficiary's medical cessation and possible reentitlement, thereby eliminating the need for filing a new application for reentitlement in title II cases.

Adjudicators will consider the following in administrative review of determinations or decisions that a beneficiary's disability has medically ceased:

- If the adjudicator determines the initial medical cessation determination was correct, he or she will then determine whether the beneficiary has again become disabled at any time through the date of his or her determination or decision because of a worsening of an existing impairment or the onset of a new impairment, if all other requirements for establishing a period of disability, including the duration and insured status requirements are met.
- If the adjudicator determines that the initial disability cessation determination was not correct, he or she will determine if the evidence establishes medical improvement as a basis for cessation of disability at any time through the date of final determination or decision.
- In every case where we find that that the beneficiary was not continuously disabled through the date of the appeal determination or decision, the adjudicator must fully explain the basis for the conclusion reached in the determination or decision. The adjudicator will state the month the beneficiary's disability ended, and, if applicable, the

month in which a new period of disability began and any intervening months during which there was no disability.

- If the beneficiary's disability has medically ceased, the determination or decision must specifically address the initial cessation determination and the beneficiary's eligibility (or ineligibility) for a new a period of disability through the date on which the appeal determination or decision is being made, or, if earlier, through the date last insured.

EFFECTIVE DATE: This Ruling is effective upon publication in the Federal Register.

[FR Doc. 2013-03914 Filed 02/20/2013 at 8:45 am; Publication Date: 02/21/2013]