SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2017-0048]

Social Security Ruling, SSR 17-4p; Titles II and XVI: Responsibility for Developing Written Evidence

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are providing notice of SSR 17-4p. This SSR clarifies our responsibilities and the responsibilities of a claimant and a claimant's representative to develop evidence and other information in disability and blindness claims.

FOR FURTHER INFORMATION CONTACT: Patrick McGuire, Office of Appellate Operations, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 605-7100. 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: Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so in accordance with 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 may base SSRs on determinations or 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 components of the Social Security Administration. 20 CFR 402.35(b)(1).

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

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Nancy A. Berryhill,
Acting Commissioner of Social Security.

POLICY INTERPRETATION RULING

SSR 17-4p: Titles II and XVI: Responsibility for Developing Written Evidence

Purpose

This Ruling clarifies our responsibilities and those of the claimant and the claimant's representative to develop evidence and other information in disability and blindness claims under titles II and XVI of the Social Security Act (Act). This Ruling applies at all levels of our administrative review process, as described below.

Citations (Authority)

Sections 206(a), 223(d), and 1614(a) of the Social Security Act, as amended; 20 CFR 404.935, 404.970, 404.1512, 404.1513, 404.1593, 404.1594, 404.1614, 404.1740, 404.1745, 416.912, 416.913, 416.993, 416.994, 416.1014, 416.1435, 416.1470, 416.1540, and 416.1545.

Introduction

We need complete evidentiary records to make accurate, consistent disability determinations and decisions at each level of our administrative review process. Although we take a role in developing the evidentiary record in disability claims, claimants and their appointed representatives have the primary responsibility under the Act to provide evidence in support of their disability or blindness claims. Consequently, we expect claimants and their representatives to make good faith efforts to ensure that we receive complete evidence.

Under the Act, we cannot find that an individual is disabled "unless [he or she] furnishes such medical and other evidence of the existence thereof as the Commissioner

of Social Security may require."[1] This statutory provision places primary responsibility for the development of evidence on the claimant. Consistent with the claimant's statutory obligation to provide us with evidence regarding his or her disability or blindness claim, our regulations require a claimant to submit or inform us about all evidence known to him or her that relates to whether or not he or she is disabled or blind.[2] At the hearings level, a claimant generally must submit or inform us about written evidence at least 5 business days before the date of his or her scheduled hearing.[3] We adopted this 5-day requirement in December 2016 and implemented it in May 2017, to address unprecedented workload challenges.[4] As we explained in the preamble to our notice of proposed rulemaking, "[w]e cannot afford to continue postponing hearing proceedings because the record is not complete at the time of the hearing."[5]

A representative's duty to submit evidence is derivative of the claimant's;[6] however, representatives must also follow our rules of conduct and standards of responsibility for representatives.[7] Those rules impose an affirmative duty on a representative to act with reasonable promptness to help obtain the information or evidence that the claimant must submit and forward the information or evidence to us as soon as practicable.[8] A representative also has an affirmative duty to assist a claimant in complying, as soon as practicable, with our requests for information or evidence.[9]

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[1] Sections 223(d)(5)(A) and 1614(a)(3)(H)(i) of the Act, 42 USC 423(d)(5)(A) and 1382c(a)(3)(H)(i).
[2] 20 CFR 404.1512(a) and 416.912(a).
[3] 20 CFR 404.935(a) and 416.1435(a).
[4] 81 FR 90987.
[5] 81 FR 45079, 45080 (2016).
[6] 20 CFR 404.1710(a) and 416.1510(a).
[7] 20 CFR 404.1740 and 416.1540.
[8] 20 CFR 404.1740(b)(1) and 416.1540(b)(1).
[9] 20 CFR 404.1740(b)(2) and 416.1540(b)(2).

This Ruling explains the requirement to submit or inform us about evidence and clarifies who has the final responsibility to obtain written evidence.

Policy Interpretation

1. Statutory Provisions

In general, an individual has a statutory obligation to provide us with evidence to prove to us that he or she is disabled or blind. The Act also precludes us from finding that an individual is disabled or blind unless he or she submits such evidence to us.[10]

The Act also provides that we "shall consider all evidence available in [an] individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability."[11] In addition, when we make any determination, the Act requires us to "make every reasonable effort to obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis."[12]

Thus, although a claimant has the primary responsibility to submit evidence related to his or her disability or blindness claim, the Act also gives us a role in developing evidence. Our statutory responsibilities to ensure that we develop a complete 12-month medical history when we make a determination about whether an individual is under a disability, and to make every reasonable effort to obtain from a claimant's treating source all medical evidence that we need to make a determination before we

[10] See sections 223(d)(5)(A) and 1614(a)(3)(H)(i) of the Act, 42 USC 423(d)(5)(A) and 1382c(a)(3)(H)(i); 20 CFR 404.1512(a)(1) and 416.912(a)(1).
[11] Sections 223(d)(5)(B) and 1614(a)(3)(H)(i) of the Act, 42 USC 423(d)(5)(B) and 1382c(a)(3)(H)(i).
[12] Id.

evaluate medical evidence from a consultative examiner, does not, however, reduce the claimant's responsibilities in any way.

2. An Individual's Affirmative Duty to Provide Written Evidence

Our regulations require an individual to submit or inform us about all evidence known to him or her that relates to whether or not he or she is disabled or blind.[13] This duty is ongoing and requires an individual to disclose any additional evidence about which he or she becomes aware. This duty applies at each level of the administrative review process, including the Appeals Council level if the evidence relates to the period on or before the date of the administrative law judge (ALJ) hearing decision.[14]

Generally, individuals must submit or inform us about any written evidence no later than 5 business days prior to the date of the scheduled hearing before an ALJ.[15] The ALJ may decline to consider or obtain any evidence if disclosure takes place after this date, unless certain circumstances outlined in the regulations apply.[16]

We expect individuals to exercise their reasonable good faith judgment about what evidence "relates" to their disability claims.[17] Evidence that may relate to whether or not a claimant is blind or disabled includes objective medical evidence, medical opinion evidence, other medical evidence, and evidence from nonmedical sources.[18]

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[13] 20 CFR 404.1512(a)(1) and 416.912(a)(1).
[14] 20 CFR 404.1512(a)(1) and 416.912(a)(1).
[15] 20 CFR 404.935 and 416.1435.
[16] 20 CFR 404.935(b) and 416.1425(b). However, for age-18 redetermination and continuing-disability review cases under title XVI of the Act, the requirement to submit or inform us about evidence no later than 5 business days before a scheduled hearing does not apply if our other rules allow the claimant to submit evidence after the date of an ALJ decision. See 20 CFR 416.1435(c) and 416.1470(b).
[17] 80 FR 14828, 14829 (March 20, 2015).
[18] 20 CFR 404.1513(a) and 416.913(a). However, evidence generally does not include confidential communications between the individual and his or her representative about providing or obtaining legal advice, and it does not include a representative's written analyses of the claim. 20 CFR 404.1513(b) and 416.913(b).

To satisfy the claimant's obligation under the regulations to "inform" us about written evidence, he or she must provide information specific enough to identify the evidence (source, location, and dates of treatment) and show that the evidence relates to the individual's medical condition, work activity, job history, medical treatment, or other issues relevant to whether or not the individual is disabled or blind. If the individual does not provide us with information specific enough to allow us to identify the written evidence and understand how it relates to whether or not the individual is disabled or blind, the individual has not informed us about evidence within the meaning of 20 CFR 404.935, 404.1512, 416.912 or 416.1435, and we will not request that evidence.

3. A Representative's Affirmative Duty to Assist in Developing Written Evidence

Our regulations require appointed representatives to assist claimants in complying fully with their responsibilities under the Act and our regulations. All representatives must faithfully execute their duties as agents and fiduciaries of claimants. In that regard, representatives must assist claimants in satisfying the claimants' duties regarding the submission of evidence and in complying with our requests for information or evidence as outlined in the prior section.[19]

In addition to these responsibilities, a representative has an affirmative duty to provide competent assistance to the claimant, including acting with reasonable promptness to help obtain information or evidence the claimant must submit.[20] To fulfill his or her affirmative duties under our rules, the representative must forward this information or evidence to us and must assist the claimant in complying with our requests

[19] See 20 CFR 404.1740(b)(1), (b)(2) and 416.1540(b)(1), (b)(2).
[20] See 20 CFR 404.1740(b)(3) and 416.1540(b)(3).

for information or evidence as soon as practicable.[21] In addition, under our rules of conduct, the representative is prohibited from, through his or her own actions or omissions, unreasonably delaying or causing to be delayed, without good cause, the processing of a claim at any stage of the administrative decisionmaking process.[22] Representatives are also prohibited from engaging in actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings.[23] A representative's failure to comply with his or her affirmative duties (or his or her engagement in prohibited actions) could result in disciplinary action.

While our regulations state that a claimant must submit or inform us of all written evidence at least 5 business days prior to a hearing, our rules of conduct place additional requirements on representatives. As discussed above, under the rules of conduct, representatives are: 1) required to act with reasonable promptness to help obtain information or evidence the claimant must submit; 2) required to assist the claimant in complying with our requests for information or evidence as soon as practicable; 3) prohibited from unreasonably delaying or causing a delay of the processing of a claim without good cause; and 4) prohibited from actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings. Therefore, we expect representatives to submit or inform us about written evidence as soon as they obtain or become aware of it. Representatives should not wait until 5 business days before the hearing to submit or inform us about written evidence unless they have compelling reasons for the delay (e.g., it was impractical to submit the evidence earlier because it was difficult to obtain or the

[21] 20 CFR 404.1740(b)(1), (b)(2) and 416.1540(b)(1), (b)(2).
[22] 20 CFR 404.1740(c)(4) and 416.1540(c)(4).
[23] 20 CFR 404.1740(c)(7) and 416.1540(c)(7).

representative was not aware of the evidence at an earlier date). In addition, it is only acceptable for a representative to inform us about evidence without submitting it if the representative shows that, despite good faith efforts, he or she could not obtain the evidence. Simply informing us of the existence of evidence without providing it or waiting until 5 days before a hearing to inform us about or provide evidence when it was otherwise available, may cause unreasonable delay to the processing of the claim, without good cause, and may be prejudicial to the fair and orderly conduct of our administrative proceedings. As such, this behavior could be found to violate our rules of conduct and could lead to sanction proceedings against the representative.

Pursuant to the Act, we may, after due notice and opportunity for hearing, suspend or prohibit from further practice before the Commissioner a representative who refuses to comply with our rules and regulations or who violates any provision for which a penalty is prescribed.[24]

We will evaluate each circumstance on a case-by-case basis to determine whether to refer a possible violation of our rules to our Office of the General Counsel (OGC). For example, in accordance with the regulatory interpretation discussed above, we may refer a possible violation of rules to OGC when:

- a representative informs us about written evidence but refuses, without good cause, to make good faith efforts to obtain and timely submit the evidence;
- a representative informs us about evidence that relates to a claim instead of acting with reasonable promptness to help obtain and timely submit the evidence to us;

[24] 42 USC 406(a)(1). See also 20 CFR 404.1745 and 416.1545 ("When we have evidence that a representative … has violated the rules governing dealings with us, we may begin proceedings to suspend or disqualify that individual from acting in a representational capacity before us.")

- the representative waits until 5 days before a hearing to provide or inform us of evidence when the evidence was known to the representative or available to provide to us at an earlier date;
- the clients of a particular representative have a pattern of informing us about written evidence instead of making good-faith efforts to obtain and timely submit the evidence; or
- any other occasion when a representative's actions with regard to the submission of evidence may violate our rules for representatives.

When we refer a possible violation to OGC, it does not change our duties with respect to the development of the evidence.[25]

4. Our Duty to Assist Claimants in Developing Written Evidence

Before we make a determination that an individual is not disabled, we must develop the individual's complete medical history, generally for at least 12 months preceding the month in which he or she applied for benefits.[26] We will make every reasonable effort to help individuals obtain medical evidence from their own medical sources and entities that maintain medical evidence when the individual gives us permission to request the information.[27] Every reasonable effort means that we will make an initial request for evidence from the medical source or entity that maintains the medical evidence, and, at any time between 10 and 20 calendar days after the initial

[25] See 20 CFR 404.935 and 416.1435.
[26] Sections 223(d)(5)(B) and 1614(a)(3)(H)(i) of the Act, 42 USC 423(d)(5)(B) and 1382c(a)(3)(H)(i); 20 CFR 404.1512(b) and 416.912(b).
[27] 20 CFR 404.1512(b)(1) and 416.912(b)(1).

request, if the evidence has not been received, we will make a follow-up request to obtain the medical evidence necessary to make a determination.[28]

We will assist with developing the record and may request existing evidence directly from a medical source or entity that maintains the evidence if:

- we were informed about the evidence (in the manner explained above) no later than 5 business days before the date of the scheduled hearing; or
- we were not informed about the evidence at least 5 business days before the date of the scheduled hearing, but one of the circumstances listed in 20 CFR 404.935(b) or 416.1535(b) applies.

We will first ask the individual or representative to submit the evidence. However, if the individual or representative shows that he or she is unable to obtain the evidence despite good faith efforts or for reasons beyond his or her control, we may request the evidence directly from the medical source or entity that maintains the evidence.

At the Appeals Council level of review, development of evidence is more limited. The Appeals Council will not obtain or evaluate additional evidence when deciding whether to grant review unless:

- one of the circumstances listed in 20 CFR 404.970(b) or 416.1470(b) applies and the individual or his or her representative shows that the evidence is related to the period on or before the date of the hearing level decision; or
- the claim is a title XVI claim that is not based on an application for benefits (e.g., an age-18 redetermination).

[28] 20 CFR 404.1512(b)(1)(i), 404.1593(b), 416.912(b)(1)(i), and 416.993(b).

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