



SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2020-0027]

Requiring Electronic Submission of Evidence by Certain Claimant Representatives

AGENCY: Social Security Administration.

ACTION: Notice; Implementation of requirement.

SUMMARY: In accordance with our rules, we are announcing a new requirement for representatives who request direct fee payment. A representative must submit all evidence electronically in claims for Social Security disability insurance benefits under title II of the Social Security Act (Act), and claims for Supplemental Security Income (SSI) payments based on disability under title XVI of the Act, if the representative requests direct fee payment on that claim; the claim or case has an electronic folder; and the claim is pending at the Office of Hearings Operations (OHO) or the Appeals Council. We expect electronic submission of this evidence will benefit claimants, representatives, and the Social Security Administration by improving our administrative efficiency and workload management, both during our COVID-19 health protocols and beyond.

DATES: We will apply this notice beginning on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Matthew Wright, Office of Hearings Operations, Social Security Administration, 5107 Leesburg Pike, Suite 1608, Falls Church, VA 22041, (703) 605-8500 for information about this notice. For general information or inquiries about the electronic folder, please write to the Office of Electronic Services and Systems Integration, 5107 Leesburg Pike, Suite 1509, Falls

Church, VA 22041. 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 September 12, 2011, we published final rules that require representatives to conduct business with us electronically at the times and in the manner we prescribe on matters for which the representative requests direct fee payment. (76 FR 56107). See 20 CFR 404.1713, 416.1513. At the time, we did not require representatives to use any specific electronic service. Rather, in the preamble to the final rule, we stated that, “[o]nce we determine that we should make a particular electronic service publicly available because it works well, we will publish a notice in the Federal Register. The notice will contain the new requirement(s) and a list of all established electronic service requirements.” (76 FR at 56107). Since we published that final rule, we established two electronic services requirements for representatives who seek direct payment of their fees.

First, on January 31, 2012 and March 8, 2012, we published notices requiring representatives requesting direct fee payment to file requests for reconsideration or requests for a hearing by an administrative law judge for disability claims electronically through the Internet Appeals (iAppeals) portal. (77 FR 4653 and 77 FR 13968).

Second, on April 18, 2016, we published a notice announcing the requirement that, for claims with certified electronic folders pending at the hearing or Appeals Council levels, a representative must access and obtain a claimant’s folder through

Appointed Representative Services (ARS) in all matters for which the representative requests direct fee payment. (81 FR 22697). We implemented this requirement to:

1) Improve administrative efficiency by eliminating the time-consuming task of providing compact disc copies of the electronic folder to representatives;

2) Ensure that representatives provide the best possible service to claimants by using the most up-to-date information in the claims folder; and

3) Manage the unprecedented workload pending at the hearings level and the Appeals Council.

New Requirement

Due to our COVID-19 pandemic protocols, we need to reduce our manual workloads, which require physical interaction with evidence. We are requiring appointed representatives who request direct fee payments to submit all evidence electronically through Electronic Records Express (ERE), ARS, or iAppeals in claims for Social Security disability insurance benefits under title II of the Act and claims for SSI payments based on disability under title XVI of the Act if: 1) the representative requests direct fee payment on that claim, 2) the claim or case has an electronic folder, and 3) the claim is pending at OHO or the Appeals Council.

We are implementing this requirement to ensure that representatives provide the best possible service to claimants through the use of our electronic services, and to allow us to effectively manage our workloads, particularly during the COVID-19 national public health emergency. We received approximately 14 million pieces of paper medical evidence and 36 million pieces of electronic medical evidence in fiscal year 2019. Submitting evidence electronically eliminates the need for our staff to process that

evidence and manually associate it with the correct claims folder, promotes administrative efficiency, reduces the amount of paper evidence that requires physical handling and processing by our employees and contractors, and minimizes errors that may occur through manual processing. In addition, while we planned to issue this new requirement prior to the current COVID-19 national public health emergency, pursuing it now is even more critical because contactless transmission of evidence allows for maximum telework flexibilities and limits the need to handle documents manually.

Increasing the use of the electronic submission of evidence minimizes manual workloads in the administrative review process and allows us to direct staff resources toward resolution of cases pending, rather than toward processing paper evidence, which requires in-office contact with the evidence and proximity to other individuals.

Because this policy offers important benefits beyond reducing the risk of COVID-19, we plan to retain this requirement even after the COVID-19 pandemic ends. Specifically, the ability to process evidence and develop cases electronically allows us to balance our workloads across the country by assigning the work to a broader network of available staff and adjudicators. This practice has proven successful with reducing the hearings backlog since 2016, and will help us carry out our mission now, while our offices currently maximize telework, and in the future. For more information about our ongoing plan to manage our hearings workload, please visit our website (<https://www.ssa.gov/appeals/>), where we provide information about the “Compassionate And Responsive Service” (CARES) plan for 2016, 2017, and 2018 – 2019.

The new requirement is subject to the conditions discussed below.

Requiring Electronic Uploads for Representatives Seeking Direct Fee Payment

In accordance with 20 CFR 404.1713, 416.1513, as of [INSERT DATE 30 AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], representatives are required to use ERE, ARS, or iAppeals, as available, to submit evidence electronically in claims for disability insurance benefits under title II of the Act and claims for SSI payments based on disability under title XVI of the Act, for which: 1) the representative requests direct fee payment, 2) the claim or case has an electronic folder, and 3) the claim is pending at OHO or the Appeals Council.

Although we do not require it, we also strongly encourage representatives who are not requesting direct payment to submit evidence electronically through ERE, ARS, or iAppeals.

The requirement that a representative submit evidence electronically, as described above, constitutes an affirmative duty under 20 CFR 404.1740(b)(4), 416.1530(b)(4). We may investigate to determine if representatives have violated this duty or are attempting to circumvent our rules, including by having claimants whom they represent submit their own evidence via non-electronic means when this requirement is applicable to the representative. We may sanction a representative who does not follow our rules. 20 CFR 404.1740-1795 and 416.1540-1595. However, we will not reject or delay a claimant's hearing or process a claim differently if a representative fails to comply with this electronic upload requirement.

We acknowledge there may be a few situations where case characteristics, our systems, or other limitations preclude a representative's ability to submit evidence electronically. In these situations, we will consider the representative's individual circumstances when deciding whether to pursue sanctions for failing to comply with this

requirement. Claimants’ representatives who are not eligible for direct payment, and representatives who do not request direct payment of fees in a case may continue to submit evidence through non-electronic means such as mailing, faxing, hand delivering, or sending documents to a contract scanner. However, we strongly encourage all representatives to submit evidence using the variety of platforms we outlined in the background of this notice and below.

Additional Information

Additional information is available on our Representing Social Security Claimants website at <http://www.ssa.gov/representation/>. Instructions for requesting access to the electronic folder are available at <https://www.ssa.gov/ar/>. Instructions for requesting an ERE account or submitting evidence through ERE without an account are available at <https://www.ssa.gov/ere/>.

Our Electronic Systems

We presently operate three systems through which users are able to upload evidence electronically: (ERE), (ARS), and iAppeals. A description of each system follows in the chart below.

Application	Purpose	Users	Available at OHO and Appeals Council Levels?
Electronic Records Express (ERE)	<ul style="list-style-type: none"> • ERE is a free web-based tool that allows users to securely upload evidence directly to a claimant’s electronic record, either online or by fax, using a barcode specific to that record. • Using this tool has a number of advantages including (1) immediate fax or upload of 	<ul style="list-style-type: none"> • Representatives • Other 3rd Parties (e.g. medical professionals, contractors) 	Yes

	evidence; (2) secure transfer of sensitive and personally identifiable information.		
Appointed Representative Services (ARS)	<ul style="list-style-type: none"> • ARS permits an appointed representative to examine an electronic folder online, download material from the electronic folder, and upload new evidence to the electronic folder. 	<ul style="list-style-type: none"> • Representatives 	Yes
iAppeals	<ul style="list-style-type: none"> • The iAppeals application accepts both Medical (Disability) & Non-Medical (Non-Disability) appeals on Title II and Title XVI denied claims or dismissals. • This process allows an individual to file the necessary application to appeal the decision and submit evidence on-line. • Evidence can be submitted with the appeal, but subsequent evidence must be uploaded via ERE or ARS. 	<ul style="list-style-type: none"> • Representatives • Individuals (Claimants) • Other 3rd Parties 	Yes

The Commissioner of the Social Security Administration, Andrew Saul, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the Federal Register.

Faye I. Lipsky,
Federal Register Liaison,
Office of Legislation and Congressional Affairs,
Social Security Administration.

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