Subpart F—Determinations of Disability, Other Determinations, Administrative Review, Finality of Decisions, and Representation of Parties

Authority: Sec. 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5)); 30 U.S.C. 923(b), 936(a), 956, and 957.

Source: 36 FR 23760, Dec. 14, 1971, unless otherwise noted.

§ 410.601 Determinations of disability.

(a) *By State agencies.* In any State which has entered into an agreement with the Commissioner to provide determinations as to whether a miner is under a total disability (as defined in §410.412) due to pneumoconiosis (as defined in §410.110(n)). Determinations as to the date total disability began, and as to the date total disability ceases, shall be made by the State agency or agencies designated in such agreement on behalf of the Commissioner for all individuals in such State, or for such class or classes of individuals in the State as may be designated in the agreement.

(b) *By the Administration.* Determinations as to whether a miner is under a total disability (as defined in §410.412) due to pneumoconiosis (as defined in §410.110(n)), as to the date the total disability began, and as to the date the total disability ceases, shall be made by the Administration on behalf of the Commissioner. The Administration shall make such determinations for individuals in any State which has not entered into an agreement to make such determinations, for any class or classes of individuals to which such an agreement is not applicable, or for any individuals outside the United States. In addition, all other determinations as to entitlement to and the amounts of benefits shall be made by the Administration on behalf of the Commissioner.

(c) *Review by Administration of State agency determinations.* The Administration may review a determination made by a State agency that a miner is under a total disability and, as a result of such review, may determine that such individual is not under a total disability, or that the total disability began on a date later than that determined by the State agency, or that the total disability ceased on a date earlier than that determined by the State agency.

(d) *Initial determinations as to entitlement or termination of entitlement.* After any determination as to whether an individual is under a total disability or has ceased to be under a total disability, the Administration shall make an initial determination (see §410.610) with respect to entitlement to benefits.

(e) *Simultaneous claims.* The adjudication of any claim under this part shall not be delayed for the adjudication of any other benefit claim by the same individual pending before the Administration.

[36 FR 23760, Dec. 14, 1971, as amended at 37 FR 20651, Sept. 30, 1972; 62 FR 38453, July 18, 1997; 65 FR 16814, Mar. 30, 2000]

§ 410.610 Administrative actions that are initial determinations.

(a) *Entitlement to benefits.* The Administration, subject to the limitations of a Federal-State agreement pursuant to section 413(b) of the Act (see §410.601 (a)), shall make findings, setting forth the pertinent facts and conclusions, and an initial determination with respect to entitlement to benefits of any individual who has filed a claim for benefits. The determination shall include the amount, if any, to which the individual is entitled and, where applicable, such amount as reduced (see §410.515), augmented or otherwise increased (see §410.510).

(b) *Modification of the amount of benefits.* The Administration shall, under the circumstances hereafter stated in this paragraph, make findings, setting forth the pertinent facts and conclusions, and an initial determination as to whether:

(1) There should be a reduction under section 412(b) (or section 412(a)(5)) of the Act, and if a reduction is to be made, the amount thereof (see §410.515(a)); or

(2) There has been an overpayment (see §410.560) or an underpayment (see §410.570) of benefits and, if so, the amount thereof, and the adjustment to be made by increasing or decreasing the monthly benefits to which a beneficiary is entitled (see §410.515(b)), and,in the case of an underpayment due a deceased beneficiary, the person to whom the underpayment should be paid.

(c) *Termination of benefits.* The Administration, subject to the limitations of a Federal-State agreement pursuant to section 413(b) of the Act (see §410.601 (a)), shall, with respect to a beneficiary who has been determined to be entitled to benefits, make findings, setting forth the pertinent facts and conclusions, and an initial determination as to whether, under the applicable provisions of part B of title IV of the Act, such beneficiary's entitlement to benefits has ended and, if so, the effective date of such termination.

(d) *Reinstatement of benefits.* The Administration shall, with respect to a beneficiary whose benefits have been determined to have ended under paragraph (c) of this section, make findings, setting forth the pertinent facts and conclusions, and an initial determination as to whether the individual is entitled to a reinstatement of benefits thus ended, and if so, the effective date of such reinstatement. Such findings of fact and determination shall be made whenever a party makes a written request for reinstatement or whenever evidence is received which justifies such reinstatement (see for example §§410.671 through 410.673).

(e) *Augmentation of benefits.* The Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination, as to whether a beneficiary has or continues to have dependents who, at the appropriate time, qualify under the relationship, dependency, and other applicable requirements of subpart C of this part, for purposes of entitling such beneficiary to an augmentation of his benefits pursuant to §410.510(b).

(f) *Other increases in benefit amounts.* The Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination, as to whether a beneficiary is entitled to an increase in benefits (other than an augmentation) pursuant to section 412(a) of the Act.

(g) *Applicant's failure to submit evidence.* If an individual fails to submit in support of his claim for benefits or request for augmentation or other increase of benefits, such evidence as may be requested by the Administration pursuant to §410.240 or any provision of the Act, the Administration may make an initial determination disallowing the individual's claim or his request for such augmentation or other increase. The initial determination, however, shall specify the conditions of entitlement to benefits or to an augmentation or other increase of benefits that the individual has failed to satisfy because of his failure to submit the requested evidence (see §410.240).

(h) *Failure to file or prosecute claim under applicable State workmen's compensation law.* The Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination, as to whether an individual has failed to file or to prosecute a claim under the applicable State workmen's compensation law pursuant to §410.219.

(i) *Withdrawal of claim or cancellation of withdrawal request.* When a request for withdrawal of a claim, or a request for cancellation of a “request for withdrawal” of a claim, is denied by the Administration, the Administration shall make findings setting forth the pertinent facts and conclusions and an initial determination of denial.

(j) *Request for reimbursement for medical expenses—amount in controversy $100 or more.* The Administration shall, with respect to a claimant who requests reimbursement for medical expenses (see §410.240(h)), make findings, setting forth the pertinent facts and conclusions and, where the amount in controversy is $100 or more, an initial determination as to whether and the extent to which the expenses for which the reimbursement request is made are medical expenses reasonably incurred by the claimant in establishing his claim. (Also see §410.615(e).)

(k) *Waiver of adjustment or recovery of monthly benefits.* The Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination as to whether there shall be no adjustment or recovery where an overpayment with respect to an individual has been made (see §410.561).

(l) *Need for representative payment.* The Social Security Administration shall make findings, setting forth the pertinent facts and conclusions and an initial determination in accordance with section 205(j) of the Social Security Act (42 U.S.C. 405(j)), as to:

(1) Whether representative payment shall serve the interests of an individual by reason of his incapacity to manage his benefit payments (see §410.581) except that findings as to incapacity with respect to an individual under age 18 or with respect to an individual adjudged legally incompetent shall not be considered initial determinations; and,

(2) Who shall be appointed or continued as representative payee on behalf of a beneficiary under this part.

(m) *Separate certification of payment to dependent.* Where the benefit of a miner or of a widow is increased ("augmented") because he or she has a qualified dependent (see §410.510(c)), and it appears to the Administration that it would be in the best interest of any such dependent to have the amount of the augmentation (to the extent attributable to such dependent) certified separately to such dependent (see §410.511(a)) or to a representative payee on his behalf (see §410.581), the Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination, as to whether separate payment of an augmented amount should be certified (see §410.511(a)).

(n) *Support of parent, brother, or sister.* The Administration shall make findings, setting forth the pertinent facts and conclusions, and an initial determination, as to whether a parent, brother, or sister, meets the requirements for support from the miner set forth in the pertinent provisions of section 412(a)(5) of the Act and whether proof of support was submitted to the Administration within the time limits set forth in the Act or under the provisions described in §410.214(d).

[36 FR 23760, Dec. 14, 1971, as amended at 37 FR 20651, Sept. 30, 1972; 41 FR 30114, July 22, 1976]

§ 410.615 Administrative actions that are not initial determinations.

Administrative actions which shall not be considered initial determinations, but which may receive administrative review include, but are not limited to, the following:

(a) The suspension of benefits pursuant to the criteria in section 203(h)(3) of the Social Security Act (42 U.S.C. 403 (h)(3)), pending investigation and determination of any factual issue as to the applicability of a reduction under section 412(b) of the Act equivalent to the amount of a deduction because of excess earnings under section 203(b) of the Social Security Act (42 U.S.C. 403(b)) (see §§410.515(d) and 410.530).

(b) The denial of an application to be made representative payee for and on behalf of a beneficiary under part B of title IV of the Act (see §410.581).

(c) The certification of any two or more individuals of the same family for joint payment of the total benefits payable to such individuals (see §410.505).

(d) The withholding by the Administration in any month, for the purpose of recovering an overpayment, of less than the full amount of benefits otherwise payable in that month (see §410.560(c)).

(e) The authorization approving or regulating the amount of the fee that may be charged or received by a representative for services before the Administration (see §410.686b(e)).

(f) The disqualification or suspension of an individual from acting as a representative in a proceeding before the Administration (see §410.688).

(g) The determination by the Administration under the authority of the Federal Claims Collection Act (31 U.S.C. 951–953) not to compromise a claim for overpayment under part B of title IV of the Act, or not to suspend or terminate collection of such a claim, or the determination to compromise such a claim, including the compromise amount and the time and manner of payment (see §410.565).

(h) Where the amount in controversy is less than $100, the denial of a request for reimbursement of medical expenses (see §410.240(h)) which are claimed to have been incurred by the claimant in establishing his claim for benefits, or the approval of such request for reimbursement in an amount less than the amount requested. (Also see §410.610(j).)

(i) The determination by the Social Security Administration that an individual is not qualified for use of the expedited appeals process, as provided in §410.629a.

(j) The denial by the Administration of a request to readjudicate a claim and apply an Acquiescence Ruling.

[37 FR 20651, Sept. 30, 1972, as amended at 40 FR 53387, Nov. 18, 1975; 41 FR 30114, July 22, 1976; 55 FR 1019, Jan. 11, 1990]

§ 410.620 Notice of initial determination.

Written notice of an initial determination shall be mailed to the party to the determination at his last known address, except that no such notice shall be required in the case of a determination that a party's entitlement to benefits has ended because of such party's death (see §410.610(c)). If the initial determination disallows, in whole or in part, the claim of a party, or if the initial determination is to the effect that a party's entitlement to benefits has ended, or that a reduction or adjustment is to be made in benefits, the notice of the determination sent to the party shall state the specific reasons for the determination. Such notice shall also inform the party of the right to reconsideration (see §410.623). Where more than the correct amount of payment has been made, see §410.561.

[37 FR 20652, Sept. 30, 1972]

§ 410.621 Effect of initial determination.

The initial determination shall be final and binding upon the party or parties to such determination unless it is reconsidered in accordance with §§410.623 through 410.629, or it is revised in accordance with §410.671.

§ 410.622 Reconsideration and hearing.

Any party who is dissatisfied with an initial determination may request that the Administration reconsider such determination, as provided in §410.623. If a request for reconsideration is filed, such action shall not constitute a waiver of the right to a hearing subsequent to such reconsideration if the party requesting such reconsideration is dissatisfied with the determination of the Administration made on such reconsideration; and a request for a hearing may thereafter be filed, as is provided in §410.630.

§ 410.623 Reconsideration; right to reconsideration.

(a) We shall reconsider an initial determination if a written request for reconsideration is filed, as provided in §410.624, by or for the party to the initial determination (see §410.610). We shall also reconsider an initial determination if a written request for reconsideration is filed, as provided in §410.624, by an individual as a widow, child, parent, brother, sister, or representative of a decedent's estate, who makes a showing in writing that his or her rights with respect to benefits may be prejudiced by such determination.

(b) Reconsideration is the first step in the administrative review process that we provide for an individual dissatisfied with the initial determination, except that we provide the opportunity for a hearing before an administrative law judge as the first step for those situations described in §§410.630 (b) and (c), where an individual appeals an initial determination denying waiver of adjustment or recovery of an overpayment (see §410.561a).

[61 FR 56133, Oct. 31, 1996]

§ 410.624 Time and place of filing request.

The request for reconsideration shall be made in writing and filed at an office of the Social Security Administration within 60 days after the date of receipt of notice of the initial determination, unless such time is extended as specified in §410.668. For purposes of this section, the date of receipt of notice of the initial determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

[41 FR 47918, Nov. 1, 1976]

§ 410.625 Parties to the reconsideration.

The parties to the reconsideration shall be the person who was the party to the initial determination (see §410.610) and any other person referred to in §410.623 upon whose request the initial determination is reconsidered.

§ 410.626 Notice of reconsideration.

If the request for reconsideration is filed by a person other than the party to the initial determination, the Administration shall, before such reconsideration, mail a written notice to such party at his last known address, informing him that the initial determination is being reconsidered. In addition, the Administration shall give such party a reasonable opportunity to present such evidence and contentions as to fact or law as he may desire relative to the determination.

§ 410.627 Reconsidered determination.

When a request for reconsideration has been filed, as provided in §§410.623 and 410.624, the Administration or the State agency, as appropriate (see §410.601), shall reconsider the determination with respect to disability or the initial determination in question and the findings upon which it was based; and upon the basis of the evidence considered in connection with the initial determination and whatever other evidence is submitted by the parties or is otherwise obtained, the Administration shall make a reconsidered determination affirming or revising, in whole or in part, the findings and determination in question.

§ 410.628 Notice of reconsidered determination.

Written notice of the reconsidered determination shall be mailed by the Social Security Administration to the parties at their last known addresses. The reconsidered determination shall state the specific reasons therefor and inform the parties of their right to a hearing (see §410.630), or, if appropriate, inform the parties of the requirements for use of the expedited appeals process (see §410.629a).

[40 FR 53387, Nov. 18, 1975]

§ 410.629 Effect of a reconsidered determination.

The reconsidered determination shall be final and binding upon all parties to the reconsideration unless a hearing is requested in accordance with §410.631 and a decision rendered or unless such determination is revised in accordance with §410.671, or unless the expedited appeals process is used in accordance with §410.629a.

[40 FR 53388, Nov. 18, 1975]

§ 410.629a Expedited appeals process; conditions for use of such process.

In cases in which a reconsideration determination has been made or a higher level of appeal has been reached, an expedited appeals process may be used in lieu of the hearing and Appeals Council review, if the following conditions are met:

(a) A reconsideration determination has been made by the Commissioner; and

(b) The individual is a party referred to in §410.629c; and

(c) The individual has filed a written request for the expedited appeals process; and

(d) The individual has alleged, and the Commissioner agrees, that the only factor precluding a favorable determination with respect to a matter referred to in §410.610, is a statutory provision which the individual alleges to be unconstitutional; and

(e) Where more than one individual is a party referred to in §410.629c, each and every party concurs in the request for the expedited appeals process.

[40 FR 53388, Nov. 18, 1975, as amended at 62 FR 38453, July 18, 1997]

§ 410.629b Expedited appeals process; place and time of filing request.

(a) *Place of filing request.* The request for the expedited appeals process must be made in writing and filed:

(1) At an office of the Social Security Administration; or

(2) With a presiding officer.

(b) *Time of filing request.* The request for the expedited appeals process must be filed at one of the following times:

(1) No later than 60 days after the date of receipt of notice of the reconsidered determination, unless the time is extended in accordance with the standards set out in §410.669 of this chapter. For purposes of this paragraph, the date of receipt of notice of the reconsidered determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

(2) If a request for hearing has been timely filed (see §410.631), at any time prior to the individual's receipt of notice of the presiding officer's decision; or

(3) Within 60 days after the date of receipt of notice of the presiding officer's decision or dismissal, unless the time is extended in accordance with the standards set out in §410.669 of this chapter. For purposes of this paragraph (b)(3), the date of receipt of notice of the presiding officer's decision or dismissal shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

(4) If a request for review by the Appeals Council has been timely filed (see §410.661), at any time prior to receipt by such individual of notice of the Appeals Council's final action.

[40 FR 53388, Nov. 18, 1975, as amended at 41 FR 47918, Nov. 1, 1976]

§ 410.629c Expedited appeals process; parties.

The parties to the expedited appeals process shall be the person or persons who were parties to the reconsideration determination in question and, if appropriate, parties to the hearing.

[40 FR 53388, Nov. 18, 1975]

§ 410.629d Expedited appeals process; agreement requirements.

(a)(1) An authorized representative of the Commissioner shall, if he determines that all conditions for the use of the expedited appeals process are met (see §410.629), prepare an agreement for signature of the party (parties) and an authorized representative of the Commissioner.

(2)(i) Where a request for hearing has been filed, but prior to issuance of a decision a request for the expedited appeals process is filed, the Chief Administrative Law Judge of the Bureau of Hearings and Appeals, or his designee, shall determine if the conditions required for entering an agreement are met.

(ii) Where a hearing decision was the last action, or where a request for review is pending before the Appeals Council, and a request for the expedited appeals process is filed, the Chairman or Deputy Chairman of the Appeals Council, or the Chairman's designee, shall determine if the conditions required for an agreement are met.

(b) An agreement with respect to the expedited appeals process shall provide that:

(1) The facts involved in the claim are not in dispute; and

(2) Except as indicated in paragraph (b)(3) of this section, the Commissioner's interpretation of the law is not in dispute; and

(3) The sole issue(s) in dispute is the application of a statutory provision(s) which is described therein and which is alleged to be unconstitutional by the party requesting use of such process; and

(4) Except for the provision challenged, the right(s) of the party is established; and

(5) The determination or decision made by the Commissioner is final for purposes of section 205(g) of the Act.

[40 FR 53388, Nov. 18, 1975, as amended at 62 FR 38453, July 18, 1997]

§ 410.629e Expedited appeals process; effect of agreement.

The agreement described in §410.629d, when signed, shall constitute a waiver by the parties and the Commissioner with respect to the need of the parties to pursue the remaining steps of the administrative appeals process, and the period for filing a civil action in a district court of the United States, as provided in section 205(g) of the Social Security Act, shall begin as of the date of receipt of notice by the party (parties) that the agreement has been signed by the authorized representative of the Commissioner. Any civil action under the expedited appeals process must be filed within 60 days after the date of receipt of notice (a signed copy of the agreement will be mailed to the party (parties) and will constitute notice) that the agreement has been signed by the Commissioner's authorized representative. For purposes of this section, the date of receipt of notice of signing shall be presumed to be 5 days after the date of the notice, unless there is a reasonable showing to the contrary.

[49 FR 46369, Nov. 26, 1984, as amended at 62 FR 38453, July 18, 1997]

§ 410.629f Effect of a request that does not result in agreement.

If a request for the expedited appeals process does not meet all the conditions for the use of the process, the Commissioner shall so advise the party (parties) and shall treat the request as a request for reconsideration, a hearing, or Appeals Council review, whichever is appropriate.

[40 FR 53388, Nov. 18, 1975, as amended at 62 FR 38453, July 18, 1997]

§ 410.630 Hearing; right to hearing.

An individual referred to in §410.632 or §410.633 who has filed a written request for a hearing under the provisions in §410.631 has a right to a hearing if:

(a) An initial determination and reconsideration of the determination have been made by the Social Security Administration concerning a matter designated in §410.610;

(b) An initial determination denying waiver of adjustment of recovery of an overpayment based on a personal conference has been made by the Social Security Administration (see §410.561a); or

(c) An initial determination denying waiver of adjustment or recovery of an overpayment based on a review of the written evidence of record has been made by the Social Security Administration (see §410.561a) and the determination was made concurrent with, or subsequent to, our reconsideration determination regarding the underlying overpayment but before an administrative law judge holds a hearing.

[61 FR 56133, Oct. 31, 1996]

§ 410.631 Time and place of filing request.

The request for hearing shall be made in writing and filed at an office of the presiding officer, or the Appeals Council. Except where the time is extended as provided in §410.669, the request for hearing must be filed:

(a) Within 60 days after the date of receipt of notice of the reconsidered determination by such individual. For purposes of this section, the date of receipt of notice of the reconsidered determinations shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

(b) Where an effective date (not more than 30 days later than the date of mailing) is expressly indicated in such notice, within 60 days after such effective date.

[41 FR 47918, Nov. 1, 1976]

§ 410.632 Parties to a hearing.

The parties to a hearing shall be the person or persons who were parties to the initial determination in question and the reconsideration. Any other individual may be made a party if such individual's rights with respect to benefits may be prejudiced by the decision, upon notice given to him by the Administrative Law Judge to appear at the hearing or otherwise present such evidence and contentions as to fact or law as he may desire in support of his interest.

§ 410.633 Additional parties to the hearing.

The following individuals, in addition to those named in §410.632, may also be parties to the hearing. A widow, child, parent, brother, sister, or representative of a decedent's estate, who makes a showing in writing that such individual's rights with respect to benefits may be prejudiced by any decision that may be made, may be a party to the hearing.

[37 FR 20652, Sept. 30, 1972]

§ 410.634 Administrative Law Judge.

The hearing provided for in this subpart F shall, except as herein provided, be conducted by an Administrative Law Judge designated by the Deputy Commissioner for Programs and Policy, or his or her designee. In an appropriate case, the Deputy Commissioner may designate another Administrative Law Judge or a member or members of the Appeals Council to conduct a hearing, in which case the provisions of this subpart F governing the conduct of a hearing by an Administrative Law Judge shall be applicable thereto.

[36 FR 23760, Dec. 14, 1971, as amended at 62 FR 38453, July 18, 1997]

§ 410.635 Disqualification of Administrative Law Judge.

No Administrative Law Judge shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for decision before him. Notice of any objection which a party may have to the Administrative Law Judge who will conduct the hearing, shall be made by such party at his earliest opportunity. The Administrative Law Judge shall consider such objection and shall, in his discretion, either proceed with the hearing or withdraw. If the Administrative Law Judge withdraws, another Administrative Law Judge shall be designated by the Deputy Commissioner for Programs and Policy, or his or her designee to conduct the hearing. If the Administrative Law Judge does not withdraw, the objecting party may, after the hearing, present his objections to the Appeals Council, as provided in §§410.660 through 410.664 as reasons why the Administrative Law Judge's decision should be revised or a new hearing held before another Administrative Law Judge.

[36 FR 23760, Dec. 14, 1971, as amended at 62 FR 38453, July 18, 1997]

§ 410.636 Time and place of hearing.

The Administrative Law Judge (formerly called “hearing examiner”) shall fix a time and a place within the United States for the hearing, written notice of which, unless waived by a party, shall be mailed to the parties at their last known addresses or given to them by personal service, not less than 10 days prior to such time. As used in this section and in §410.647, the United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. Written notice of the objections of any party to the time and place fixed for a hearing shall be filed by the objecting party with the Administrative Law Judge at the earliest practicable opportunity (before the time set for such hearing). Such notice shall state the reasons for the party's objection and his choice as to the time and place within the United States for the hearing. The Administrative Law Judge may, for good cause, fix a new time and/or place within the United States for the hearing.

[37 FR 20652, Sept. 30, 1972]

§ 410.637 Hearing on new issues.

At any time after a request for hearing has been made, as provided in §410.631, but prior to the mailing of notice of the decision, the Administrative Law Judge may, in his discretion, either on the application of a party or his own motion, in addition to the matters brought before him by the request for hearing, give notice that he will also consider any specified new issue (see §410.610) whether pertinent to the same or a related matter, and whether arising subsequent to the request for hearing, which may affect the rights of such party to benefits under this part even though the Administration has not made an initial and reconsidered determination with respect to such new issue: *Provided,* That notice of the time and place of the hearing on any new issue shall, unless waived, be given to the parties within the time and manner specified in §410.636: *And provided further,* That the determination involved is not one within the jurisdiction of a State agency under a Federal-State agreement entered into pursuant to section 413(b) of the Act. Upon the giving of such notice, the Administrative Law Judge shall, except as otherwise provided, proceed to hearing on such new issue in the same manner as he would on an issue on which an initial and reconsidered determination has been made by the Administration and a hearing requested with respect thereto by a party entitled to such hearing.

§ 410.638 Change of time and place for hearing.

The Administrative Law Judge may change the time and place for the hearing, either on his own motion or for good cause shown by a party. The Administrative Law Judge may adjourn or postpone the hearing, or he may reopen the hearing for the receipt of additional evidence at any time prior to the mailing of notice to the party of the decision in the case. Reasonable notice shall be given to the parties of any change in the time or place of hearing or of an adjournment or a reopening of the hearing.

§ 410.639 Subpenas.

When reasonably necessary for the full presentation of a case, an Administrative Law Judge (formerly called "hearing examiner") or a member of the Appeals Council, may, either upon his own motion or upon the request of a party, issue subpenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. Parties who desire the issuance of a subpena shall, not less than 5 days prior to the time fixed for the hearing, file with the Administrative Law Judge or at a district office of the Administration a written request therefor, designating the witnesses or documents to be produced, and describing the address or location thereof with sufficient particularity to permit such witnesses or documents to be found. The request for a subpena shall state the pertinent facts which the party expects to establish by such witnesses or documents and whether such facts could be established by other evidence without the use of a subpena. Subpenas, as provided for above, shall be issued in the name of the Commissioner, and the Administration shall pay the cost of the issuance and the fees and mileage of any witness so subpenaed, as provided in section 205(d) of the Social Security Act.

[37 FR 20652, Sept. 30, 1972, as amended at 62 FR 38453, July 18, 1997]

§ 410.640 Conduct of hearing.

Hearings shall be open to the parties and to such other persons as the Administrative Law Judge deems necessary and proper. The Administrative Law Judge shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters. If the Administrative Law Judge believes that there is relevant and material evidence available which has not been presented at the hearing, the Administrative Law Judge may adjourn the hearing or, at any time prior to the mailing of notice of the decision, reopen the hearing for the receipt of such evidence. The order in which evidence and allegations shall be presented and the procedure at the hearing generally, except as these regulations otherwise expressly provide, shall be in the discretion of the Administrative Law Judge and of such nature as to afford the parties a reasonable opportunity for a fair hearing.

§ 410.641 Evidence.

Evidence may be received at the hearing even though inadmissible under rules of evidence applicable to court procedures.

§ 410.642 Witnesses.

Witnesses at the hearing shall testify under oath or affirmation or as directed by the Administrative Law Judge, unless they are excused by the Administrative Law Judge for cause. The Administrative Law Judge may examine the witnesses and shall allow the parties or their representatives to do so. If the Administrative Law Judge conducts the examination of a witness, he may allow the parties to suggest matters as to which they desire the witness to be questioned, and the Administrative Law Judge shall question the witness with respect to such matters if they are relevant and material to any issue pending for decision before him.

§ 410.643 Oral argument and written allegations.

The parties, upon their request, shall be allowed a reasonable time for the presentation of oral argument or for the filing of briefs or other written statements of allegations as to facts or law. Where there is more than one party to the hearing, copies of any brief or other written statement shall be filed in sufficient number that they may be made available to any party.

§ 410.644 Record of hearing.

A complete record of the proceedings at the hearing shall be made. The record shall be transcribed in any case which is certified to the Appeals Council without decision by the Administrative Law Judge (see §§410.654 and 410.657 to 410.659 inclusive), in any case where a civil action is commenced against the Commissioner (see §410.666), or in any other case when directed by the Administrative Law Judge or the Appeals Council.

[36 FR 23760, Dec. 14, 1971, as amended at 62 FR 38453, July 18, 1997]

§ 410.645 Joint hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters in issue at each such hearing, the Administrative Law Judge (formerly called “hearing examiner”) may fix the same time and place for each hearing and conduct all such hearings jointly. However, where there is no common issue of law or fact involved in two or more hearings and any party objects to a joint hearing, a joint hearing may not be held. Where joint hearings are held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

[37 FR 20652, Sept. 30, 1972]

§ 410.646 Consolidated issues.

When one or more additional issues are raised by the Administrative Law Judge pursuant to §410.637, such issues may, in the discretion of the Administrative Law Judge, be consolidated for hearing and decision with other issues pending before him upon the same request for a hearing, whether or not the same or substantially similar evidence is relevant and material to the matters in issue. A single decision may be made upon all such issues.

§ 410.647 Waiver of right to appear and present evidence.

(a) *General.* Any party to a hearing shall have the right to appear before the Administrative Law Judge (formerly called “hearing examiner”), personally or by representative, and present evidence and contentions. If all parties are unwilling, unable, or waive their right to appear before the Administrative Law Judge, personally or by representative, it shall not be necessary for the Administrative Law Judge to conduct an oral hearing as provided in §§410.636 to 410.646, inclusive. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Administrative Law Judge. Such waiver may be withdrawn by a party at any time prior to the mailing of notice of the decision in the case. Even though all of the parties have filed a waiver of the right to appear and present evidence and contentions at a hearing before the Administrative Law Judge, the Administrative Law Judge may, nevertheless, give notice of a time and place and conduct a hearing as provided in §§410.636 to 410.646, inclusive, if he believes that the personal appearance and testimony of the party or parties would assist him to ascertain the facts in issue in the case.

(b) *Record as basis for decision.* Where all of the parties have waived their right to appear in person or through a representative and the Administrative Law Judge does not schedule an oral hearing, the decision shall be based on the record. Where a party residing outside the United States at a place not readily accessible to the United States does not indicate that he wishes to appear in person or through a representative before an Administrative Law Judge, and there are no other parties to the hearing who wish to appear, the Administrative Law Judge may decide the case on the record. In any case where the decision is to be based on the record, the Administrative Law Judge shall make a record of the relevant written evidence, including applications, written statements, certificates, affidavits, reports, and other documents which were considered in connection with the initial determination and reconsideration, and whatever additional relevant and material evidence the party or parties may present in writing for consideration by the Administrative Law Judge. Such documents shall be considered as all of the evidence in the case.

[37 FR 20652, Sept. 30, 1972]

§ 410.648 Dismissal of request for hearing; by application of party.

With the approval of the Administrative Law Judge at any time prior to the mailing of notice of the decision, a request for a hearing may be withdrawn or dismissed upon the application of the party or parties filing the request for such hearing. A party may request a dismissal by filing a written notice of such request with the Administrative Law Judge or orally stating such request at the hearing.

§ 410.649 Dismissal by abandonment of party.

With the approval of the Administrative Law Judge, a request for hearing may also be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a request for hearing if neither the party nor his representative appears at the time and place fixed for the hearing and either (a) prior to the time for hearing such party does not show good cause as to why neither he nor his representative can appear or (b) within 10 days after the mailing of a notice to him by the Administrative Law Judge to show cause, such party does not show good cause for such failure to appear and failure to notify the Administrative Law Judge prior to the time fixed for hearing that he cannot appear.

§ 410.650 Dismissal for cause.

The presiding officer may, on his own motion, dismiss a hearing request, either entirely or as to any stated issue, under any of the following circumstances:

(a) *Res judicata.* Where there has been a previous determination or decision by the Commissioner with respect to the rights of the same party on the same facts pertinent to the same issue or issues which has become final either by judicial affirmance or, without judicial consideration, upon the claimant's failure timely to request reconsideration, hearing, or review, or to commence a civil action with respect to such determination or decision (see §§410.624, 410.631, 410.661, and 410.666).

(b) *No right to hearing.* Where the party requesting a hearing is not a proper party under §410.632 or §410.633 or does not otherwise have a right to a hearing under §410.630. This would include, but is not limited to, an individual claiming as a representative payee appointed pursuant to §410.581 (see §410.615).

(c) *Hearing request not timely filed.* Where the party has failed to file a hearing request timely pursuant to §410.631 and the time for filing such request has not been extended as provided in §410.669.

(d) *Death of party.* Where the party who filed the hearing request dies and there is no information before the presiding officer or the Social Security Administration showing that an individual who is not a party may be prejudiced by the Social Security Administration's determination which is the subject of the request for hearing: *Provided;* That if, within 60 days after the date notice of such dismissal is mailed to the original party at his last known address any such other individual states in writing that he desires a hearing on such claim and shows that he may be prejudiced by the Social Security Administration's initial determination, then the dismissal of the request for hearing shall be vacated.

[36 FR 23760, Dec. 14, 1971, as amended at 37 FR 20653, Sept. 30, 1972; 41 FR 54753, Dec. 15, 1976; 62 FR 38453, July 18, 1997]

§ 410.651 Notice of dismissal and right to request review thereon.

Notice of the Administrative Law Judge's dismissal action shall be given to the parties or mailed to them at their last known addresses. Such notice shall advise the parties of their right to request review of the dismissal action by the Appeals Council (see §410.660).

§ 410.652 Effect of dismissal.

The dismissal of a request for hearing shall be final and binding unless vacated (see §410.653).

§ 410.653 Vacation of dismissal of request for hearing.

A presiding officer or the Appeals Council may, on request of the party and for good cause shown, vacate any dismissal of a request for hearing at any time within 60 days after the date of receipt of the notice of dismissal by the party requesting the hearing at his last known address. For purposes of this section, the date of receipt of the dismissal notice shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary. In any case where a presiding officer has dismissed the

hearing request, the Appeals Council may, on its own motion, within 60 days after the mailing of such notice, review such dismissal and may, in its discretion vacate such dismissal.

[41 FR 54753, Dec. 15, 1976]

§ 410.654 Administrative Law Judge's decision or certification to Appeals Council.

As soon as practicable after the close of a hearing, the Administrative Law Judge, except as herein provided, shall make a decision in the case or certify the case with a recommended decision to the Appeals Council for decision (see §§410.657 through 410.659). If the Administrative Law Judge makes a decision in the case, such decision shall be based upon the evidence adduced at the hearing (§§410.636 through 410.646, inclusive) or otherwise included in the hearing record (see §410.647). The decision shall be made in writing and contain findings of fact and a statement of reasons. A copy of the decision shall be mailed to the parties at their last known addresses.

§ 410.655 Effect of Administrative Law Judge's decision.

The decision of the Administrative Law Judge provided for in §410.654, shall be final and binding upon all parties to the hearing unless it is reviewed by the Appeals Council (see §§410.663 through 410.665) or unless it is revised in accordance with §410.671, or unless the expedited appeals process is used, in accordance with §410.629a. If a party's request for review of the Administrative Law Judge's decision is denied (see §410.662) or is dismissed (see §410.667), such decision shall be final and binding upon all parties to the hearing unless a civil action is filed in a district court of the United States, as is provided in section 205(g) of the Social Security Act, as incorporated in the Federal Coal Mine Health and Safety Act by section 413(b) of that Act (see §410.670a), or unless the decision is revised in accordance with §410.671.

[40 FR 53388, Nov. 18, 1975]

§ 410.656 Removal of hearing to Appeals Council.

The Appeals Council on its own motion may remove to itself any request for hearing pending before an Administrative Law Judge. The hearing on any matter so removed to the Appeals Council shall be conducted in accordance with the requirements of §§410.637 to 410.653, inclusive. Notice of such removal shall be mailed to the parties at their last known addresses.

§ 410.657 Appeals Council proceedings on certification and review; procedure before Appeals Council on certification by the Administrative Law Judge.

When a case has been certified to the Appeals Council by an Administrative Law Judge with his recommended decision (see §410.654), the Administrative Law Judge shall mail notice of such action to the parties at their last known addresses. The parties shall be notified of their right to file with the Appeals Council within 10 days from the date of mailing of the recommended decision, briefs or other written statements of exceptions or allegations as to applicable fact and law, except in the case of suspension or disqualification (see §410.694(b)). Upon request of any party made within such 10-day period, a 10-day extension of time for filing such briefs or statements shall be granted and, upon a showing of good cause, such 10-day period may be extended, as appropriate. Where there is more than one party, copies of such briefs or written statements shall be filed in sufficient number that they may be made available to any party requesting a copy or any other party designated by the Appeals Council. Copies or a statement of the contents of the documents or other written evidence received in evidence in the hearing record, and a copy of the transcript of oral evidence adduced at the hearing, if any, or a condensed statement thereof shall be made available to any party upon request, upon payment of the cost, or if such cost is not readily determinable, the estimated amount thereof, unless, for good cause shown, such payment is waived. When a case has been certified to the Appeals Council by an Administrative Law Judge for decision any party shall be given, upon his request, a reasonable opportunity to appear before the Appeals Council for the purpose of presenting oral argument.

§ 410.658 Evidence in proceeding before Appeals Council.

Evidence in addition to that admitted into the hearing record by the Administrative Law Judge may not be received as evidence except where it appears to the Appeals Council that such additional evidence may affect its decision. If no additional material is presented, but such evidence is available and may affect its decision, the Appeals Council shall receive such evidence or designate an Administrative Law Judge or member of the Appeals Council before whom the evidence shall be introduced. Before such additional evidence is received, notice that evidence will be received with respect to certain matters shall be mailed to the parties, unless such notice is waived, at their last known addresses, and the parties shall be given a reasonable opportunity to present evidence which is relevant and material to such matters. When the additional evidence is presented to an Administrative Law Judge or a member of the Appeals Council, a transcript or a condensed statement of such evidence shall be made available to any party upon request, upon payment of the cost, or if such cost is not readily determinable, the estimated amount thereof, unless, for good cause shown, such payment is waived.

§ 410.659 Decision of Appeals Council.

The decision of the Appeals Council, when a case has been certified to it by an Administrative Law Judge along with his recommended decision, shall be made in accordance with the provisions of §410.665.

§ 410.660 Right to request review of Administrative Law Judge's decision or dismissal.

If an Administrative Law Judge has made a decision, as provided in §410.654, or dismissed a request for hearing, as provided in §§410.648 through 410.650, any party thereto may request the Appeals Council to review such decision or dismissal.

§ 410.661 Time and place of filing request.

The request for review shall be made in writing and filed with an office of the Social Security Administration, or with a presiding officer, or the Appeals Council. Such request shall be accompanied by whatever documents or other evidence the party desires the Appeals Council to consider in its review. The request for review must be filed within 60 days after the date of receipt of notice of the presiding officer's decision or dismissal, unless the time is extended as provided in §410.669. For purposes of this section, the date of receipt of notice of the presiding officer's decision or dismissal shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

[41 FR 54753, Dec. 15, 1976]

§ 410.662 Action by Appeals Council on review.

The Appeals Council may dismiss (see §410.667) or, in its discretion, deny or grant a party's request for review of a presiding officer's decision, or may, on its own motion, within 60 days after the date of the notice of such decision, reopen such decision for review or for the purpose of dismissing the party's request for hearing for any reason for which it could have been dismissed by the presiding officer (see §§410.648 through 410.650). Notice of the action by the Appeals Council shall be mailed to the party at his last known address.

[41 FR 54753, Dec. 15, 1976]

§ 410.663 Procedure before Appeals Council on review.

(a) *Availability of documents or other written statements.* Whenever the Appeals Council determines to review a presiding officer's decision (except when the case is remanded to a presiding officer in accordance with §410.665), the Appeals Council shall make available to any party upon request, copies or a statement of the contents of the documents or other written evidence upon which the presiding officer's decision was based, and a copy of the transcript of oral evidence, if any, or a condensed statement thereof, upon payment of the cost, or if such cost is not readily determinable, the estimated amount thereof, unless for good cause shown, such payment is waived.

(b) *Filing briefs or other written statements.* The parties shall be given, upon request, a reasonable opportunity to file briefs or other written statements of allegations as to fact and law. Copies of each brief or other written statements, where there is more than one party, shall be filed in sufficient number that they may be made available to any party requesting a copy and to any other party designated by the Appeals Council.

(c) *Appearance to present oral argument.* Any party may request an appearance before the Appeals Council for the purpose of presenting oral argument. Such request shall be granted where the Appeals Council determines that a significant question of law or policy is presented or where the Appeals Council is of the opinion that such oral argument would be beneficial in rendering a proper decision in the case. Where the request for appearance is granted, the party will be notified of the time and place for the appearance at least 10 days prior to the date of the scheduled appearance.

[41 FR 53790, Dec. 9, 1976]

§ 410.664 Evidence admissible on review.

(a) *Admissibility of additional evidence.* Evidence in addition to that introduced at the hearing before the presiding officer, or documents before the presiding officer where such hearing was waived (see §410.647), may not be admitted except where it appears to the Appeals Council that such evidence is relevant and material to an issue before it and thus may affect its decision.

(b) *Receipt of evidence by Presiding Officer.* Where the Appeals Council determines that additional evidence is needed for a sound decision, it will remand the case to a presiding officer for receipt of the evidence, further proceedings, and a new decision, except where the Appeals Council can obtain the evidence more expeditiously and the rights of the claimant will not be adversely affected.

(c) *Receipt of evidence by Appeals Council.* Where the Appeals Council obtains the evidence itself, before such evidence is admitted into the record, notice that evidence will be received with respect to certain issues shall be mailed to the parties, unless such notice is waived, at their last known addresses, and the parties shall be given a reasonable opportunity to comment thereon and to present evidence which is relevant and material to such issues.

(d) *Copies of evidence.* When additional evidence is presented to a presiding officer or to the Appeals Council, a transcript or a condensed statement of such evidence shall be made available to any party upon request, upon payment of the cost, or if such cost is not readily determinable, the estimated amount thereof, unless, for good cause shown, such payment is waived.

[41 FR 53790, Dec. 9, 1976]

§ 410.665 Decision by Appeals Council or remanding of case.

(a) *General.* If a case is certified to the Appeals Council by an Administrative Law Judge (see §410.654), the Appeals Council shall make a decision. If the Appeals Council decides to review an Administrative Law Judge's decision as provided in §410.662, the Appeals Council may, upon such review, affirm, modify, or reverse the decision of the Administrative Law Judge, or vacate such decision and remand the case to an Administrative Law Judge either for rehearing and the issuance of a decision thereon or to take further testimony in the case and return it to the Appeals Council with a recommended decision for decision by the Appeals Council. Where a case has been remanded by a court for further consideration, the Appeals Council may proceed then to make the decision or it may in turn remand the case to an Administrative Law Judge with directions to return the case upon completion of the necessary action to the Appeals Council with a recommended decision for decision by the Appeals Council.

(b) *Case remanded to an Administrative Law Judge.* Where a case is remanded to an Administrative Law Judge, he shall initiate such additional proceedings and take such other action (under §§410.632 through 410.655) as is directed by the Appeals Council in its order of remand. The Administrative Law Judge may take any additional action not inconsistent with the order of remand. Upon completion of all action called for by the order of remand and any other action initiated by the Administrative Law Judge, the Administrative

Law Judge shall promptly (1) issue a decision in writing which contains findings of fact and a statement of reasons, or (2) when so directed by the Appeals Council, return the case with his recommended decision to the Appeals Council for its decision. A copy of the decision shall be mailed to each party at his last known address. When a recommended decision is issued, the Administrative Law Judge shall also notify each party of his right to file with the Appeals Council within 10 days from the date of mailing of the recommended decision, briefs or other written statements of exceptions and allegations as to applicable fact and law, except in the case of suspension or disqualification (see §410.694(b)). Upon request of any party made within such 10-day period, a 10-day extension of time for filing such briefs or statements shall be granted and, upon a showing of good cause, such 10-day period may be extended, as appropriate.

(c) *Decision by Appeals Council.* A decision of the Appeals Council shall be based upon the evidence received into the hearing record and such further evidence as the Appeals Council may receive as provided in §§410.657, 410.658, 410.663, and 410.664. This decision shall be made in writing and contain findings of fact, and a statement of reasons. A copy of the decision shall be mailed to each party at his last known address.

§ 410.666 Effect of Appeals Council's decision or refusal to review.

The Appeals Council may deny a party's request for review or it may grant review and either affirm or reverse the Administrative Law Judge's decision. The decision of the Appeals Council, or the decision of the Administrative Law Judge where the request for review of such decision is denied (see §410.662), shall be final and binding upon all parties to the hearing unless a civil action is filed in a district court of the United States under the provisions of section 205(g) of the Social Security Act, as incorporated by section 413(b) of the Act (see §410.670a), or unless the decision is revised under the provisions described in §410.671.

[37 FR 20653, Sept. 30, 1972]

§ 410.667 Dismissal by Appeals Council.

The Appeals Council may dismiss a request for review or proceedings before it under any of the following circumstances:

(a) *Upon request of party.* Proceedings pending before the Appeals Council may, with the approval of the Appeals Council, be discontinued and dismissed upon written application of the party or parties who filed the request for review to withdraw such request.

(b) *Death of party.* Proceedings before the Appeals Council, whether on request for review or review on the motion of the Appeals Council, may be dismissed upon the death of a party only if the record affirmatively shows that there is no prejudiced individual who wishes to continue the action.

(c) *Request for review not timely filed.* A request for review of a decision by an Administrative Law Judge shall be dismissed where the party has failed to file a request for review within the time specified in §410.661 and the time for filing such request has not been extended as provided in §410.669.

§ 410.668 Extension of time to request reconsideration.

If a party to an initial determination desires to file a request for reconsideration after the time for filing such request has passed (see §410.624), such party may file a petition with the Administration for an extension of time for the filing of such request. Such petition shall be in writing and shall state the reasons why the request for reconsideration was not filed within the required time. For good cause shown, the component of the Administration which has jurisdiction over the proceedings (see §410.601) may extend the time for filing the request for reconsideration.

§ 410.669 Extension of time to request hearing or review or begin civil action.

(a) *General.* Any party to a reconsidered determination, a decision of an Administrative Law Judge (formerly called *hearing examiner*), or a decision of the Appeals Council (resulting from an initial determination as

described in §410.610), may petition for an extension of time for filing a request for hearing or review or for commencing a civil action in a district court of the United States, although the time for filing such request or commencing such action (see §§410.631 and 410.661 and section 205(g) of the Social Security Act as incorporated by section 413(b) of the Act), has passed. If an extension of the time fixed by §410.631 for requesting a hearing before an Administrative Law Judge is sought, the petition may be filed with an Administrative Law Judge. In any other case, the petition shall be filed with the Appeals Council. The petition shall be in writing and shall state the reasons why the request or action was not filed within the required time. For good cause shown, an Administrative Law Judge or the Appeals Council, as the case may be, may extend the time for filing such request or action.

(b) *Where civil action commenced against wrong defendant.* If a party to a decision of the Appeals Council, or to a decision of the Administrative Law Judge where the request for review of such decision is denied (see §410.662), timely commences a civil action in a district court as provided by section 205(g) of the Social Security Act as incorporated by section 413(b) of the Act, but names as defendant the United States or any agency, officer, or employee thereof instead of the Commissioner either by name or by official title, and causes process to be served in such action as required by the Federal Rules of Civil Procedure, the Administration shall mail notice to such party that he has named the incorrect defendant in such action; and the time within which such party may commence the civil action pursuant to section 205(g) of the Social Security Act against the Commissioner shall be deemed to be extended to and including the 60th day following the date of mailing of such notice.

[37 FR 20653, Sept. 30, 1972, as amended at 62 FR 38453, July 18, 1997]

§ 410.670 Review by Appeals Council.

Where an Administrative Law Judge has determined the matter of extending the time for filing such request (whether he has allowed or denied the request for such extension), the Appeals Council on its own motion may review such determination and either affirm or reverse it. In connection with this review, the Appeals Council may consider whatever additional evidence relevant to this request a party may wish to present.

§ 410.670a Judicial review.

A civil action may be commenced in a district court of the United States with respect to a decision of the Appeals Council, or to a decision of the Administrative Law Judge (formerly called *hearing examiner*) where the request for review of such decision is denied by the Appeals Council, as provided in section 205 (g) and (h) of the Social Security Act, as incorporated by section 413(b) of the Act.

[37 FR 20653, Sept. 30, 1972]

§ 410.670b Interim provision for the adjudication of certain claims filed prior to May 19, 1972.

(a) *General.* Section 6 of the Black Lung Benefits Act of 1972 added a section 431 to title IV of the Federal Coal Mine Health and Safety Act of 1969 which requires the Commissioner to review, under the terms of the 1972 amendments, all claims for benefits which were filed prior to May 19, 1972 (the date of enactment of the 1972 amendments), and which were either pending before the Administration on that date, or which had been previously disallowed. Therefore, notwithstanding any other provision of this subpart, and in keeping with the objective of providing for effective and expeditious processing of the large backlog of claims that have to be reexamined under the 1972 amendments, all such claims for benefits will be adjudicated under the terms of the amended Act in accordance with this section.

(b) *Cases remanded by the Federal courts.* (1) Those claims described in paragraph (a) of this section which are remanded to the Commissioner by the Federal courts are reviewed in the Bureau of Hearings and Appeals.

(2) A decision will be rendered by an Administrative Law Judge (formerly called *hearing examiner*) in all such claims which can be allowed under the 1972 amendments on the evidence then of record. Such

decision shall be considered the Administrative Law Judge's decision referred to in §410.654, and a party to the decision may request review thereof by the Appeals Council in accordance with §§410.660 and 410.661.

(3) A copy of such Administrative Law Judge's decision shall be mailed to such party at his last known address. The date of mailing of such decision will replace the date of any prior notice of an initial determination for purposes of §410.672.

(4) Those claims described in paragraph (a) of this section which are remanded to the Commissioner by the Federal courts and which cannot be allowed in the Bureau of Hearings and Appeals under the 1972 amendments on the evidence then of record, shall be remanded to the Administration's Bureau of Disability Insurance for a new determination.

(c) *Claims pending in the Bureau of Hearings and Appeals.* (1) Those claims described in paragraph (a) of this section which are pending before an Administrative Law Judge or the Appeals Council and which can be allowed under the 1972 amendments on the evidence then of record will be decided by an Administrative Law Judge or the Appeals Council, and this decision will constitute the decision referred to in §410.654 or §410.665(c).

(2) A copy of such Administrative Law Judge's decision shall be mailed to such party at his last known address. The date of mailing of such decision will replace the date of any prior notice of an initial determination for purposes of §410.672. Such claims pending before an Administrative Law Judge or the Appeals Council which cannot be allowed under the 1972 amendments on the evidence then of record shall be remanded to the Administration's Bureau of Disability Insurance for a new determination.

(d) *Claims pending in, or remanded to the Bureau of Disability Insurance.* (1) Those claims described in paragraph (a) of this section in which no timely request for hearing has been filed, or in which an Administrative Law Judge or the Appeals Council has previously rendered or affirmed a decision of disallowance, or which have been remanded by the Bureau of Hearings and Appeals in accordance with paragraph (b) or (c) of this section, shall be reviewed in the Bureau of Disability Insurance and a new determination made.

(2) Written notice of such determination shall be mailed to the party at his last known address. If such new determination is adverse to the party in whole or in part, the notice shall explain the basis for the determination. It shall also advise the party of his right to request further consideration of the determination by the Bureau of Disability Insurance if he has additional evidence or contentions as to fact or law to submit. The effective date of such notice shall be a date 30 days later than the date of mailing and shall be expressly indicated in such notice.

(3) Before this effective date, the party may request further consideration of the determination by the Bureau of Disability Insurance if he has additional evidence or contentions as to fact or law to submit. If such further consideration is requested timely, the new determination referred to in paragraph (d)(1) of this section shall not go into effect. Rather, his claim will be further considered as requested and a further determination made. Written notice of the latter determination will be mailed to the party at his last known address. If this determination is adverse to the party in whole or in part, the notice shall explain the basis for the determination. The effective date of such notice shall be the date of mailing.

(4) The effective date of the determination referred to in paragraph (d)(2) or (d)(3) of this section shall replace the date of any prior notice of an initial determination for purposes of §410.672.

(5) A determination made as provided in paragraph (d)(1) or (d)(3) of this section shall be final and binding upon all parties to such determination unless a hearing is requested within 6 months of the effective date of the notice of the determination, except where a previously filed hearing request or request for review by the Appeals Council or by a court is still pending, in which case the claim will be referred to an Administrative Law Judge for a hearing.

(6) Those claims described in paragraph (a) of this section in which no initial determination has been made shall be adjudicated under the 1972 amendments in accordance with the other provisions of this part.

[37 FR 20653, Sept. 30, 1972, as amended at 62 FR 38453, July 18, 1997]

§ 410.670c Application of circuit court law.

The procedures which follow apply to administrative determinations or decisions on claims involving the application of circuit court law.

(a) The Administration will apply a holding in a United States Court of Appeals decision which it determines conflicts with its interpretation of a provision of the Social Security Act or regulations unless the Government seeks further review or the Administration relitigates the issue presented in the decision in accordance with paragraphs (c) and (d) of this section. The Administration will apply the holding to claims at all levels of administrative adjudication within the applicable circuit unless the holding, by its nature, applies only at certain levels of adjudication.

(b) When the Administration determines that a United States Court of Appeals holding conflicts with the Administration's interpretation of a provision of the Social Security Act or regulations and the Government does not seek further review or is unsuccessful on further review, the Administration will issue a Social Security Acquiescence Ruling that describes the administrative case and the court decision, identifies the issue(s) involved, and explains how the Administration will apply the holding, including, as necessary, how the holding relates to other decisions within the applicable circuit. These rulings will generally be effective on the date of their publication in the Federal Register and will apply to all determinations and decisions made on or after that date. If the Administration makes a determination or decision between the date of a circuit court decision and the date an Acquiescence Ruling is published, the claimant may request application of the published ruling to the prior determination or decision. The claimant must first demonstrate that application of the ruling could change the prior determination or decision. A claimant may so demonstrate by submitting a statement which cites the ruling and indicates what finding or statement in the rationale of the prior determination or decision conflicts with the ruling. If the claimant can so demonstrate, the Administration will readjudicate the claim at the level at which it was last adjudicated in accordance with the ruling. Any readjudication will be limited to consideration of the issue(s) covered by the ruling and any new determination or decision on readjudication will be subject to administrative and judicial review in accordance with this subpart. A denial of a request for readjudication will not be subject to further administrative or judicial review. If a claimant files a request for readjudication within the sixty day appeal period and that request is denied, the Administration shall extend the time to file an appeal on the merits of the claim to sixty days after the date that the request for readjudication is denied.

(c) After the Administration has published a Social Security Acquiescence Ruling to reflect a holding of a United States Court of Appeals on an issue, the Administration may decide under certain conditions to relitigate that issue within the same circuit. The Administration will relitigate only when the conditions specified in paragraphs (c) (2) and (3) of this section are met, and, in general, one of the events specified in paragraph (c)(1) of this section occurs.

(1) Activating events: (i) An action by both Houses of Congress indicates that a court case on which an Acquiescence Ruling was based was decided inconsistently with congressional intent, such as may be expressed in a joint resolution, an appropriations restriction, or enactment of legislation which affects a closely analogous body of law;

(ii) A statement in a majority opinion of the same circuit indicates that the court might no longer follow its previous decision if a particular issue were presented again;

(iii) Subsequent circuit court precedent in other circuits supports the Administration's interpretation of the Social Security Act or regulations on the issue(s) in question; or

(iv) A subsequent Supreme Court decision presents a reasonable legal basis for questioning a circuit court holding upon which the Administration bases a Social Security Acquiescence Ruling.

(2) The General Counsel of SSA, after consulting with the Department of Justice, concurs that relitigation of an issue and application of the Administration's interpretation of the Social Security Act or regulations at the administrative level within the circuit would be appropriate.

(3) The Administration publishes a notice in the Federal Register that it intends to relitigate an issue, and that it will apply its interpretation of the Social Security Act or regulations at the administrative level within the circuit. The notice will explain why the Administration made this decision.

(d) When the Administration decides to relitigate an issue, it will provide a notice explaining its action to all affected claimants. In adjudicating claims subject to relitigation, decisionmakers throughout the SSA administrative review process will apply the Administration's interpretation of the Social Security Act and regulations, but will also state in written determinations or decisions how the claims would have been decided under the circuit standard. Claims not subject to relitigation will continue to be decided under the Acquiescence Ruling in accordance with the circuit standard. So that affected claimants can be readily identified and any subsequent decision of the circuit court or the Supreme Court can be implemented quickly and efficiently, the Administration will maintain a listing of all claimants who receive this notice and will provide them the relief ordered by the court.

(e) The Administration will rescind as obsolete a Social Security Acquiescence Ruling and apply its interpretation of the Social Security Act or regulations by publishing a notice in the Federal Register when any of the following events occurs:

(1) The Supreme Court overrules or limits a circuit court holding that was the basis of an Acquiescence Ruling;

(2) A circuit court overrules or limits itself on an issue that was the basis of an Acquiescence Ruling;

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

(4) The Administration subsequently clarifies, modifies or revokes the regulation or ruling that was the subject of a circuit court holding that the Administration determined conflicts with its interpretation of the Social Security Act or regulations, or it subsequently publishes a new regulation(s) addressing an issue(s) not previously included in its regulations when that issue(s) was the subject of a circuit court holding that conflicted with its interpretation of the Social Security Act or regulations and that holding was not compelled by the statute or Constitution.

[55 FR 1019, Jan. 11, 1990, as amended at 62 FR 38453, July 18, 1997]

§ 410.671 Revision for error or other reason; time limitation generally.

(a) *Initial, revised or reconsidered determination.* Except as otherwise provided in §410.675, an initial, revised or reconsidered determination (see §§410.610 and 410.627) may be revised by the appropriate component of the Administration having jurisdiction over the proceedings (§410.601), on its own motion or upon the petition of any party for a reason, and within the time period, prescribed in §410.672.

(b) *Decision or revised decision of an Administrative Law Judge or the Appeals Council.* Either upon the motion of the Administrative Law Judge or the Appeals Council, as the case may be, or upon the petition of any party to a hearing, except as otherwise provided in §410.675, any decision of an Administrative Law Judge provided for in §410.654 or any revised decision may be revised by such Administrative Law Judge, or by another Administrative Law Judge if the Administrative Law Judge who issued the decision is unavailable, or by the Appeals Council for a reason and within the time period prescribed in §410.672. Any decision of the Appeals Council provided for in §410.665 or any revised decision of the Appeals Council, may be revised by the Appeals Council for a reason and within the time period prescribed in §410.672. For the purpose of this paragraph (b), an Administrative Law Judge shall be considered to be unavailable if among other circumstances, such hearing examiner has died, terminated his employment, is on leave of absence, has had a transfer of official station, or is unable to conduct a hearing because of illness.

§ 410.672 Reopening initial, revised or reconsidered determinations of the Administration and decisions of an Administrative Law Judge or the Appeals Council; finality of determinations and decisions.

An initial, revised or reconsidered determination of the Administration or a decision, or revised decision of an Administrative Law Judge or of the Appeals Council which is otherwise final under §410.621, §410.629, §410.655, or §410.666 may be reopened:

(a) Within 12 months from the date of the notice of the initial determination (see §410.620), to the party to such determination, or

(b) After such 12-month period, but within 4 years after the date of the notice of the initial determination (see §410.620) to the party to such determination, upon a finding of good cause for reopening such determination or decision, or

(c) At any time, when:

(1) Such initial, revised, or reconsidered determination or decision was procured by fraud or similar fault of the claimant or some other person; or

(2) An adverse claim has been filed; or

(3) An individual previously determined to be dead, and on whose account entitlement of a party was established, is later found to be alive; or

(4) The death of the individual on whose account a party's claim was denied for lack of proof of death is established—

(i) By reason of an unexplained absence from his or her residence for a period of 7 years (see §410.240(g)(2)); or

(ii) By location or identification of his or her body; or

(5) Such initial, revised, or reconsidered determination or decision is unfavorable, in whole or in part, to the party thereto but only for the purpose of correcting clerical error or error on the face of the evidence on which such determination or decision was based.

[36 FR 23760, Dec. 14, 1971, as amended at 49 FR 46370, Nov. 26, 1984]

§ 410.673 Good cause for reopening a determination or decision.

Good cause shall be deemed to exist where:

(a) New and material evidence is furnished after notice to the party to the initial determination;

(b) A clerical error has been made in the computation of benefits;

(c) There is an error as to such determination or decision on the face of the evidence on which such determination or decision is based.

§ 410.674 Finality of suspension of benefit payments for entire taxable year because of earnings.

Notwithstanding the provisions in §410.672, a suspension of benefit payments for an entire taxable year because of earnings therein, may be reopened only within the time period and subject to the conditions provided in section 203(b)(1)(B) of the Social Security Act.

§ 410.675 Time limitation for revising finding suspending benefit payments for entire taxable year because of earnings.

No determination of the Administration or decision of an Administrative Law Judge or the Appeals Council shall be revised after the expiration of the normal period for requesting reconsideration, hearing or review, with respect to such determination or decision (see §§410.624, 410.631, 410.661, and 410.666) to correct a finding which suspends benefit payments for an entire taxable year because of earnings therein, unless the correction of such finding is permitted under section 203(h)(1)(B) of the Social Security Act.

§ 410.675a Late completion of timely investigation.

The Administration may revise a determination or decision after the applicable time period in §410.672(a) or §410.672(b) expires if the Administration begins an investigation to determine whether to revise the determination or decision before the applicable time period expires. The Administration may begin the investigation based either on a request by the party or an action by the Administration. The investigation is a process of gathering facts after a determination or decision has been reopened to determine if a revision of the determination or decision is applicable.

(a) If the Administration has diligently pursued the investigation to its conclusion, the Administration may revise the determination or decision. The revision may be favorable or unfavorable to the party. *Diligently pursued* means that in light of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the Administration concludes the investigation and if necessary, revises the determination or decision within 6 months from the date the Administration begins the investigation.

(b) If the Administration has not diligently pursued the investigation to its conclusion, the administration will revise the determination or decision if a revision is applicable and if it will be favorable to the party. The Administration will not revise the determination or decision if it will be unfavorable to the party.

[49 FR 46370, Nov. 26, 1984]

§ 410.676 Notice of revision.

(a) When any determination or decision is revised, as provided in §410.671 or §410.675, notice of such revision shall be mailed to the parties to such determination or decision at their last known addresses. The notice of revision which is mailed to the parties shall state the basis for the revised decision.

(b) Where a determination of the Administration is revised under paragraph (a) of this section, the notice of revision shall inform the parties of their right to a hearing as provided in §410.678.

(c)(1) Where an Administrative Law Judge or the Appeals Council proposes to revise a decision under paragraph (a) of this section and the revision would be based on evidence theretofore not included in the record on which the decision proposed to be revised was based, the parties shall be given notice of the proposal of the Administrative Law Judge or the Appeals Council, as the case may be, to revise such decision, and unless hearing is waived, a hearing with respect to such proposed revision shall be granted as provided in this subpart F.

(2) If a revised decision is appropriate, such decision shall be rendered by the Administrative Law Judge or the Appeals Council, as the case may be, on the basis of the entire record, including the additional evidence. If the decision is revised by an Administrative Law Judge, any party thereto may request review by the Appeals Council (§§410.660 and 410.661) or the Appeals Council may review the decision on its own motion (§410.662).

§ 410.677 Effect of revised determination.

The revision of a determination or decision shall be final and binding upon all parties thereto unless a party authorized to do so (see §410.676) files a written request for a hearing with respect to a revised determination in accordance with §410.678 or a revised decision is reviewed by the Appeals Council as provided in this subpart F, or such revised determination or decision is further revised in accordance with §410.672.

§ 410.678 Time and place of requesting hearing on revised determination.

The request for hearing shall be made in writing and filed at an office of the Social Security Administration, or with a presiding officer, or the Appeals Council, within 60 days after the date of receipt of notice of the revised determination. Upon the filing of such a request, a hearing with respect to such revision shall be held (see §§410.631 through 410.653) and a decision made in accordance with the provisions of §410.654. For purposes of this section, the date of receipt of notice of the revised determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

[41 FR 47918, Nov. 1, 1976]

§ 410.679 Finality of findings with respect to other claims for benefits based on the disability or death of a miner.

Findings of fact made in a determination or decision in a claim by one party for benefits may be revised in determining or deciding another claim for benefits based on the disability or death of the same miner, even though such findings may not be revised in the former claim because of the provisions of §410.672.

§ 410.680 Imposition of reductions.

The imposition of reductions constitutes an initial determination with respect to each month for which a reduction is imposed. A finding that a reduction is not to be imposed is an initial determination for each month with respect to which the circumstances upon which such finding was based remain unchanged. The suspension of benefits, pending a determination as to the applicability of a reduction equivalent to the amount of a deduction because of excess earnings under section 203(b) of the Social Security Act shall not, however, constitute an initial determination (see §410.615(a)).

§ 410.681 Change of ruling or legal precedent.

Good cause shall be deemed not to exist where the sole basis for reopening the determination or decision is a change of legal interpretation or administrative ruling upon which such determination or decision was made.

§ 410.682 General applicability.

The provisions of §§410.672, 410.673, and 410.679 to 410.681, inclusive, shall be applicable notwithstanding any provisions to the contrary in this subpart F.

§ 410.683 Certification of payment; determination or decision providing for payment.

When a determination or decision has been made under any provision of §§410.610 to 410.678, inclusive, to the effect that a payment or payments of benefits should be made to any person, the Administration shall, except as hereafter provided, certify to the U.S. Treasury Department the name and address of the person to be paid, the amount of the payment or payments and the time at which such payment or payments should be made.

§ 410.683a [Reserved]

§ 410.683b Transfer or assignment.

The Administration shall not certify any amount for payment to an assignee or transferee of the person entitled to such payment under the Act, nor shall the Administration certify such amount for payment to any person claiming such payment by virtue of an execution, levy, attachment, garnishment, or other legal process or by virtue of any bankruptcy or insolvency proceeding against or affecting the person entitled to the payment under the Act.

[37 FR 20654, Sept. 30, 1972]

§ 410.684 Representation of party; appointment of representative.

A party in an action leading to an initial or reconsidered determination, hearing, or review, as provided in §§410.610 to 410.678, inclusive, may appoint as his representative in any such proceeding only an individual who is qualified under §410.685 to act as a representative. Where the individual appointed by a party to represent him is not an attorney, written notice of the appointment must be given, signed by the party appointing the representative, and accepted by the representative appointed. The notice of appointment shall be filed at an office of the Administration, with a hearing examiner, or with the Appeals Council of the Administration, as the case may be. Where the representative appointed is an attorney, in the absence of information to the contrary, his representation that he has such authority, shall be accepted as evidence of the attorney's authority to represent a party.

§ 410.685 Qualifications of representative.

(a) *Attorney.* Any attorney in good standing who (1) is admitted to practice before a court of a State, territory, district or insular possession or before the Supreme Court of the United States or an inferior Federal court, (2) has not been disqualified or suspended from acting as a representative in proceedings before the Social Security Administration, and (3) is not, pursuant to any provision of law, otherwise prohibited from acting as a representative, may be appointed as a representative in accordance with §410.684.

(b) *Person other than attorney.* Any person (other than an attorney described in paragraph (a) of this section) who (1) is of good character, in good repute, and has the necessary qualifications to enable him to render valuable assistance to an individual in connection with his claim, (2) has not been disqualified or suspended from acting as a representative in proceedings before the Social Security Administration, and (3) is not, pursuant to any provision of law, otherwise prohibited from acting as a representative, may be appointed as a representative in accordance with §410.684.

[36 FR 23760, Dec. 14, 1971, as amended at 37 FR 17707, Aug. 30, 1972]

§ 410.686 Authority of representative.

A representative, appointed and qualified as provided in §§410.684 and 410.685, may make or give, on behalf of the party he represents, any request or notice relative to any proceeding before the Administration under part B of title IV of the Act, including reconsideration, hearing and review, except that such representative may not execute a claim for benefits, unless he is a person designated in §410.222 as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and allegations as to facts and law in any proceeding affecting the party he represents and to obtain information with respect to the claim of such party to the same extent as such party. Notice to any party of any administrative action, determination, or decision, or request to any party for the production of evidence may be sent to the representative of such party, and such notice or request shall have the same force and effect as if it had been sent to the party represented. (For fees to representatives for services performed before the Administration for an individual, see §410.686b.)

[37 FR 20654, Sept. 30, 1972]

§ 410.686a Proceedings before a State or Federal court.

(a) *Representation of claimant in court proceeding.* Any service rendered by any representative in any proceeding before any State or Federal court shall not be considered services in any proceeding before the Social Security Administration for purposes of §§410.686 and 410.686b. However, if the representative has also rendered services in connection with the claim in any proceeding before the Administration, as defined in §410.686e, he must specify what, if any, amount of the fee he desires to charge is for services performed before the Administration, and if he charges any fee for such services, he must file the petition and furnish all of the information required by §410.686c(a).

(b) *Attorney fee allowed by a Federal court.* In any case where a Federal court in any proceeding under part B of title IV of the Act renders a judgment favorable to a claimant who was represented before the court by an attorney, and the court, pursuant to section 206(b) of the Social Security Act, allows to the attorney as part of its judgment a fee not in excess of 25 percent of the total of past-due benefits to which the claimant is entitled by reason of the judgment, the Administration may certify the amount of such fee for payment to such attorney out of, but not in addition to, the amount of the past-due benefits payable (see §410.686d(a)). No other fee may be certified for direct payment to such attorney for such representation.

(c) *Past-due benefits defined.* The term *past-due benefits* as used in paragraph (b) of this section means the total accumulated amount of benefits payable under part B of title IV of the Act by reason of the court's judgment through the month prior to the month of the judgment favorable to the claimant who was represented by the attorney.

[37 FR 17707, Aug. 30, 1972]

§ 410.686b Fee for services performed for an individual before the Social Security Administration.

(a) *General.* A fee for services performed for an individual before the Social Security Administration in any proceeding under part B of title IV of the Act may be charged and received only as provided in paragraph (b) of this section.

(b) *Charging and receiving fee.* An individual who desires to charge or receive a fee for services rendered for an individual in any proceeding under part B of title IV of the Act before the Administration (see §410.686e), and who is qualified under §410.685, must file a written petition therefor in accordance with §410.686c(a). The amount of the fee he may charge or receive, if any, shall be determined on the basis of the factors described in §410.686c(b) by an authorized official of the appropriate component of the Administration, where the services were concluded by an initial, reconsidered, or revised determination, or by the Bureau of Hearings and Appeals where there is a decision or action by a hearing examiner or the Appeals Council of the Social Security Administration, as the case may be. Every such fee which is charged or received must be approved as provided in this section and no fee shall be charged or received which is in excess of the amount so approved. This rule shall be applicable whether the fee is charged to or received from a party to the proceeding or someone else. Pursuant to section 206(a) of the Social Security Act, in the case of a representative qualified as an attorney under §410.685(a), the Administration may certify the amount of such fee, subject to the limitations in §410.686d(b), for payment out of, but not in addition to, the amount of past-due benefits payable.

(c) *Past-due benefits defined.* The term *past-due benefits* as used in paragraph (b) of this section means the total accumulated amount of benefits payable under part B of title IV of the Act by reason of the favorable determination through the month prior to the month such determination is effectuated.

(d) *Notice of fee determination.* Written notice of a fee determination made in accordance with paragraph (b) of this section shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the determination, the fact that the Administration assumes no responsibility for payment except that pursuant to section 206(a) of the Social Security Act the Administration may certify payment to an attorney, and that each party may request an administrative review of the determination within 30 days of the date of the notice.

(e) *Administrative review of fee determination*—(1) *Request timely filed.* Administrative review of a fee determination will be granted if either the representative or the claimant files a written request for such review at an office of the Social Security Administration within 30 days after the date of the notice of the fee determination. The party requesting the review shall send a copy of the request to the other party. An authorized official of the Social Security Administration who did not participate in the fee determination in question will review the determination. Written notice of the decision made on the administrative review shall be mailed to the representative and the claimant at their last known addresses.

(2) *Request not timely filed.* Where the representative or the claimant files a request for administrative review, in accordance with paragraph (e)(1) of this subsection, but files such request more than 30 days after the date of the notice of the fee determination, the person making the request shall state in writing the

reasons why it was not filed within the 30-day period. The Social Security Administration will grant the review only if it determines that there was good cause for not filing the request timely. For purposes of this section, *good cause* is defined as any circumstance or event which would prevent the representative or the claimant from filing the request for review within such 30-day period or would impede his efforts to do so. Examples of such circumstances include the following:

(i) The representative or claimant was seriously ill or had a physical or mental impairment and such illness prevented him from contacting the Social Security Administration in person or in writing;

(ii) There was a death or serious illness in the individual's family;

(iii) Pertinent records were destroyed by fire or other accidental cause;

(iv) The representative or claimant was furnished incorrect or incomplete information by the Social Security Administration about his right to request review;

(v) The individual failed to receive timely notice of the fee determination;

(vi) The individual transmitted the request to another government agency in good faith within such 30-day period and the request did not reach the Social Security Administration until after such period had expired.

[37 FR 17708, Aug. 30, 1972, as amended at 41 FR 10425, Mar. 11, 1976]

§ 410.686c Petition for approval of fee.

(a) *Filing of petition.* In accordance with §410.686b, to obtain approval of a fee for services performed before the Social Security Administration in any proceeding under the Act, a representative, upon completion of the proceedings in which he rendered services, must file at an office of the Social Security Administration a written petition which shall contain the following information:

(1) The dates his services began and ended;

(2) An itemization of services rendered by him in a proceeding under the Act, with the amount of time spent in hours, or parts thereof, on each type of service;

(3) The amount of the fee he desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered in the same matter before any State or Federal court;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled him to render valuable serv-ices to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the person represented.

(b) *Factors considered in evaluating a petition for fee.* In evaluating a request for approval of a fee, the purpose of the coal miner's benefits program—to provide a measure of economic security for the beneficiaries thereof—will be considered, together with the following factors:

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required in rendition of the services;

(4) The amount of time spent on the case;

(5) The results achieved. (While consideration is always to be given to the amount of benefits, if any, which are payable in a case, the amount of fee will not be based on the amount of such benefits alone but on a consideration of all of the factors listed in this section. The benefits payable in a given claim are governed by specific statutory provisions and by the occurrence of termination, deduction, or nonpayment events specified in the law, factors which are unrelated to efforts of the representative. In addition, the amount of accrued benefits payable in a given claim is affected by the length of time that has elapsed since the claimant became entitled to benefits.);

(6) The level of administrative review to which the claim was carried within the Social Security Administration and the level of such review at which the representative entered the proceedings; and

(7) The amount of the fee requested for services rendered, excluding the amount of any expenses incurred, but including any amount previously authorized or requested.

(c) *Time limit for filing petition for approval of attorney fee.* In order for an attorney to receive direct payment of a fee authorized by the Social Security Administration from a claimant's past-due benefits (see §410.686d(b)), the petition for approval of a fee, or written notice of the intent to file a petition, should be filed with the Social Security Administration within 60 days of the date the notice of the determination favorable to the claimant is mailed. Where no such petition is filed within 60 days after the date such notice is mailed, written notice shall be sent to the attorney and the claimant, at their last known addresses, that the Social Security Administration will certify for payment to the claimant all the past-due benefits unless the attorney files within 20 days from the date of such notice a written petition for approval of a fee pursuant to paragraphs (a) and (b) of this section, or a written request for an extension of time. The attorney shall send to the claimant a copy of any request for an extension of time. Where the petition is not filed within this time, or by the last day of any extension approved, the Social Security Administration may certify the funds for payment to the claimant. Any fee charged thereafter remains subject to Social Security Administration approval but collection of any such approved fee shall be a matter between the attorney and his client.

[37 FR 17708, Aug. 30, 1972; 37 FR 18525, Sept. 13, 1972, as amended at 41 FR 10425, Mar. 11, 1976]

§ 410.686d Payment of fees.

(a) *Fees allowed by a Federal court.* Subject to the limitations in §410.686a (b), the Administration shall certify for payment direct to attorneys, out of past-due benefits as defined in §410.686a(c), the amount of fee allowed by a Federal court in a proceeding under part B of title IV of the Act.

(b) *Fees authorized by the Social Security Administration*—(1) *Attorneys.* Except as provided in §410.686c(c), in any case where the Social Security Administration makes a determination favorable to a claimant who was represented by an attorney as defined in §410.685(a) in a proceeding before the Social Security Administration and as a result of such determination past-due benefits, as defined in §410.686b (c), are payable, the Social Security Administration shall certify for payment to the attorney, out of such benefits, whichever of the following is the smallest:

(i) Twenty-five percent of the total of such past-due benefits;

(ii) The amount of attorney's fee set by the Social Security Administration, or

(iii) The amount agreed upon between the attorney and the claimant.

(2) *Persons other than attorneys.* The Administration assumes no responsibility for the payment of any fee which a representative as defined in §410.685(b) (person other than an attorney) has been authorized to charge in accordance with the provisions of §410.686b and will not deduct such fee from benefits payable under the Act to any beneficiary.

(c) *Responsibility of the Social Security Administration.* The Social Security Administration assumes no responsibility for the payment of a fee based on a revised determination where the request for administrative review was not filed timely. (See paragraph (b) of this section for payment of attorney fees authorized by the Social Security Administration.)

[37 FR 17708, Aug. 30, 1972, as amended at 41 FR 10426, Mar. 11, 1976]

§ 410.686e Services rendered for an individual in a proceeding before the Administration under part B of title IV of the Act.

Services rendered for an individual in a proceeding before the Administration under part B of title IV of the Act consist of services performed for an individual in connection with any claim before SSA under part B of title IV of the Act, including any services in connection with any asserted right calling for an initial or reconsidered determination by the Administration, and a decision or action by a hearing examiner or by the Appeals Council of the Bureau of Hearings and Appeals of the Administration, whether such determination, decision, or action is rendered before or after remand of a claim by a court. Such services include, but are not limited to, services in connection with a claim for benefits; a request for modification of the amount of benefits; the reinstatement of benefits; proof of support; and proof of employment as a coal miner.

[37 FR 17708, Aug. 30, 1972, as amended at 62 FR 38453, July 18, 1997]

§ 410.687 Rules governing the representation and advising of claimants and parties.

No attorney or other representative shall:

(a) With intent to defraud, in any matter willfully and knowingly deceive, mislead, or threaten by word, circular, letter, or advertisement, either oral or written, or any claimant or prospective claimant or beneficiary with respect to benefits or any other initial or continued right under the Act; or

(b) Knowingly charge or collect, or make any agreement to charge or collect, directly or indirectly, any fee in connection with any claim except under the circumstances prescribed in §410.686b, or knowingly charge, demand, receive, or collect for services rendered before a Federal court in connection with a claim under part B of title IV of the Act, any amount in excess of that allowed by a court as described in §410.686a(b).

(c) Knowingly make or participate in the making or presentation of any false statement, representation, or claim as to any material fact affecting the right of any person to benefits under part B of title IV of the Act, or as to the amount of any benefits; or

(d) Divulge, except as may be authorized by regulations now or hereafter prescribed by the Commissioner, any information furnished or disclosed to him by the Administration relating to the claim or prospective claim of another person (see §410.120).

[37 FR 17709, Aug. 30, 1972, as amended at 62 FR 38453, July 18, 1997]

§ 410.687a Effective date.

The provisions of §§410.686a, 410.686b, 410.686c, 410.686d, and 410.686e, shall be effective upon publication in the Federal Register (8–31–72), with respect to all claims processed thereafter, and shall apply to all legal services rendered in connection with those claims for which a fee has not been fully paid before this effective date, notwithstanding the fact that fee contracts for such services may have been entered into, or services rendered, before this effective date.

[37 FR 17709, Aug. 30, 1972]

§ 410.688 Disqualification or suspension of an individual from acting as a representative in proceedings before SSA.

Whenever it appears that an individual has violated any of the rules in §410.687, or has been convicted of a violation under section 206 of the Social Security Act, or has otherwise refused to comply with the Commissioner's rules or regulations on representation of claimants, SSA may institute proceedings as herein provided to suspend or disqualify that individual from acting as a representative in proceedings before SSA.

[62 FR 38453, July 18, 1997]

§ 410.689 Notice of charges.

The Deputy Commissioner for Programs and Policy, or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the individual. This notice will be delivered to the individual charged, either by certified or registered mail to his last known address or by personal delivery, and will advise the individual charged to file an answer, within 30 days from the date the notice was mailed, or was delivered to him personally, indicating why he should not be suspended or disqualified from acting as a representative before the SSA. This 30-day period may be extended for good cause shown, by the Deputy Commissioner for Programs and Policy, or his or her designee. The answer must be in writing under oath (or affirmation) and filed with the Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, within the prescribed time limitation. If an individual charged does not file an answer within the time prescribed, he shall not have the right to present evidence. However, see §410.692(g) relating to statements with respect to sufficiency of the evidence upon which the charges are based or challenging the validity of the proceedings.

[36 FR 23760, Dec. 14, 1971, as amended at 37 FR 17709, Aug. 30, 1972; 62 FR 38453, July 18, 1997]

§ 410.690 Withdrawal of charges.

If an answer is filed or evidence is obtained that establishes, to the satisfaction of the Deputy Commissioner for Programs and Policy, or his or her designee, that reasonable doubt exists about whether the individual charged should be suspended or disqualified from acting as a representative before the Administration, the charges may be withdrawn. The notice of withdrawal shall be mailed to the individual charged at his last known address.

[36 FR 23760, Dec. 14, 1971, as amended at 62 FR 38453, July 18, 1997]

§ 410.691 Referral to the Deputy Commissioner for Programs and Policy, or his or her designee, for hearing and decision.

If action is not taken to withdraw the charges before the expiration of 15 days after the time within which an answer may be filed, the record of the evidence in support of the charges shall be referred to the Deputy Commissioner for Programs and Policy, or his or her designee, with a request for a hearing and a decision on the charges.

[36 FR 23760, Dec. 14, 1971, as amended at 62 FR 38453, July 18, 1997]

§ 410.692 Hearing on charges.

(a) *Hearing officer.* Upon receipt of the notice of charges, the record, and the request for hearing (see §410.691), the Deputy Commissioner for Programs and Policy, or his or her designee, shall designate an Administrative Law Judge to act as a hearing officer to hold a hearing on the charges. No hearing officer shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party or where he has any interest in the matter pending for decision before him. Notice of any objection which a party to the hearing may have to the hearing officer who has been designated to conduct the hearing shall be made at the earliest opportunity. The hearing officer shall consider the objection(s) and shall, in his discretion, either proceed with the hearing or withdraw. If the hearing officer withdraws, another hearing officer shall be designated as provided in this section to conduct the hearing. If the hearing officer does not withdraw, the objecting party may, after the hearing, present his objections to the Appeals Council as reason why he

believes the hearing officer's decision should be revised or a new hearing held before another hearing officer.

(b) *Time and place of hearing.* The hearing officer shall notify the individual charged and the Deputy Commissioner for Programs and Policy, or his or her designee, of the Administration, of the time and place for a hearing on the charges. The notice of the hearing shall be mailed to the individual charged at his last known address and to the Deputy Commissioner for Programs and Policy, or his or her designee, not less than 20 days prior to the date fixed for the hearing.

(c) *Change of time and place for hearing.* The hearing officer may change the time and place for the hearing (see paragraph (b) of this section) either on his own motion or at the request of a party for good cause shown. The hearing officer may adjourn or postpone the hearing, or he may reopen the hearing for the receipt of additional evidence at any time prior to the mailing of notice of the decision in the case (see §410.693). Reasonable notice shall be given to the parties of any change in the time or place of hearing or of any adjournment or reopening of the hearing.

(d) *Parties.* A person against whom charges have been preferred under the provisions of §410.688 shall be a party to the hearing. The Deputy Commissioner for Programs and Policy, or his or her designee, of the Administration, shall also be a party to the hearing.

(e) *Subpenas.* Any party to the hearing may request the hearing officer or a member of the Appeals Council to issue subpenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. The hearing officer may on his own motion issue subpenas for the same purposes when he deems such action reasonably necessary for the full presentation of the facts. Any party who desires the issuance of a subpena shall, not less than 5 days prior to the time fixed for the hearing, file with the hearing officer a written request therefor, designating the witnesses or documents to be produced, and describing the address or location thereof with sufficient particularity to permit such witnesses or documents to be found. The request for a subpena shall state the pertinent facts which the party expects to establish by such witness or document and whether such facts could be established by other evidence without the use of a subpena. Subpenas, as provided for above, shall be issued in the name of the Commissioner of Social Security, and the Social Security Administration shall pay the cost of the issuance and the fees and mileage of any witness so subpenaed, as provided in section 205(d) of the Social Security Act.

(f) *Conduct of the hearing.* The hearing shall be open to the parties and to such other persons as the hearing officer or the individual charged deems necessary or proper. The hearing officer shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters: *Provided, however,* That if the individual charged has filed no answer he shall have no right to present evidence but in the discretion of the hearing officer may appear for the purpose of presenting a statement of his contentions with regard to the sufficiency of the evidence or the validity of the proceedings upon which his suspension or disqualification, if it occurred, would be predicated or, in his discretion, the hearing officer may make or recommend a decision (see §410.693) on the basis of the record referred in accordance with §410.691. If the individual has filed an answer and if the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may at any time prior to the mailing of notice of the decision, or submittal of a recommended decision, reopen the hearing for the receipt of such evidence. The order in which the evidence and the allegations shall be presented and the conduct of the hearing shall be at the discretion of the hearing officer.

(g) *Evidence.* Evidence may be received at the hearing, subject to the provision herein, even though inadmissible under the rules of evidence applicable to court procedure. The hearing officer shall rule on the admissibility of evidence.

(h) *Witnesses.* Witnesses at the hearing shall testify under oath or affirmation. The witnesses of a party may be examined by such party or by his representative, subject to interrogation by the other party or by his representative. The hearing officer may ask such questions as he deems necessary. He shall rule upon any objection made by either party as to the propriety of any question.

(i) *Oral and written summation.* The parties shall be given, upon request, a reasonable time for the presentation of an oral summation and for the filing of briefs or other written statements of proposed findings of fact and conclusions of law. Copies of such briefs or other written statements shall be filed in sufficient number that they may be made available to any party in interest requesting a copy and to any other party designated by the Appeals Council.

(j) *Record of hearing.* A complete record of the proceedings at the hearing shall be made and transcribed in all cases.

(k) *Representation.* The individual charged may appear in person and he may be represented by counsel or other representative.

(l) *Failure to appear.* If after due notice of the time and place for the hearing, a party to the hearing fails to appear and fails to show good cause as to why he could not appear, such party shall be considered to have waived his right to be present at the hearing. The hearing officer may hold the hearing so that the party present may offer evidence to sustain or rebut the charges.

(m) *Dismissal of charges.* The hearing officer may dismiss the charges in the event of the death of the individual charged.

(n) *Cost of transcript.* On the request of a party, a transcript of the hearing before the hearing officer will be prepared and sent to the requesting party upon the payment of cost, or if the cost is not readily determinable, the estimated amount, thereof, unless for good cause such payment is waived.

[36 FR 23760, Dec. 14, 1971, as amended at 37 FR 17709, Aug. 30, 1972; 62 FR 38454, July 18, 1997]

§ 410.693 Decision by hearing officer.

(a) *General.* As soon as practicable after the close of the hearing, the hearing officer shall issue a decision (or certify the case with a recommended decision to the Appeals Council for decision under the rules and procedures described in §§410.657 through 410.659) which shall be in writing and contain findings of fact and conclusions of law. The decision shall be based upon the evidence of record. If the hearing officer finds that the charges have been sustained, he shall either:

(1) Suspend the individual for a specified period of not less than 1 year, nor more than 5 years, from the date of the decision, or

(2) Disqualify the individual from further practice before the Administration until such time as the individual may be reinstated under §410.699.

A copy of the decision shall be mailed to the individual charged at his last known address and to the Deputy Commissioner for Programs and Policy, or his or her designee, together with notice of the right of either party to request the Appeals Council to review the decision of the hearing officer.

(b) *Effect of hearing officer's decision.* The hearing officer's decision shall be final and binding unless reversed or modified by the Appeals Council upon review (see §410.697).

(1) If the final decision is that the individual is disqualified from practice before the Administration, he shall not be permitted to represent an individual in a proceeding before the Administration until authorized to do so under the provisions of §410.699.

(2) If the final decision suspends the individual for a specified period of time, he shall not be permitted to represent an individual in a proceeding before the Administration during the period of suspension unless authorized to do so under the provisions of §410.699.

[36 FR 23760, Dec. 14, 1971, as amended at 62 FR 38454, July 18, 1997]

§ 410.694 Right to request review of the hearing officer's decision.

(a) *General.* After the hearing officer has issued a decision, either of the parties (see §410.692) may request the Appeals Council to review the decision.

(b) *Time and place of filing request for review.* The request for review shall be made in writing and filed with the Appeals Council within 30 days from the date of mailing the notice of the hearing officer's decision, except where the time is extended for good cause. The requesting party shall certify that a copy of the request for review and of any documents that are submitted therewith (see §410.695) have been mailed to the opposing party.

§ 410.695 Procedure before Appeals Council on review of hearing officer's decision.

The parties shall be given, upon request, a reasonable time to file briefs or other written statements as to fact and law and to appear before the Appeals Council for the purpose of presenting oral argument. Any brief or other written statement of contentions shall be filed with the Appeals Council, and the presenting party shall certify that a copy has been mailed to the opposing party.

§ 410.696 Evidence admissible on review.

(a) *General.* Evidence in addition to that introduced at the hearing before the hearing officer may not be admitted except where it appears to the Appeals Council that the evidence is relevant and material to an issue before it, and subject to the provisions in this section.

(b) *Individual charged filed answer.* Where it appears to the Appeals Council that additional relevant material is available and the individual charged filed an answer to the charges (see §410.689), the Appeals Council shall require the production of such evidence and may designate a hearing officer or member of the Appeals Council to receive such evidence. Before additional evidence is admitted into the record, notice that evidence will be received with respect to certain issues shall be mailed to the parties, and each party shall be given a reasonable opportunity to comment on such evidence and to present other evidence which is relevant and material to the issues unless such notice is waived.

(c) *Individual charged did not file answer.* Where the individual charged filed no answer to the charges (see §410.689), evidence in addition to that introduced at the hearing before the hearing officer may not be admitted by the Appeals Council.

§ 410.697 Decision by Appeals Council on review of hearing officer's decision.

The decision of the Appeals Council shall be based upon evidence received into the hearing record (see §410.692(j)) and such further evidence as the Appeals Council may receive (see §410.696) and shall either affirm, reverse, or modify the hearing officer's decision. The Appeals Council, in modifying a hearing officer's decision suspending the individual for a specified period shall in no event reduce a period of suspension to less than 1 year, or in modifying a hearing officer's decision to disqualify an individual shall in no event impose a period of suspension of less than 1 year. Where the Appeals Council affirms or modifies a hearing officer's decision, the period of suspension or disqualification shall be effective from the date of the Appeals Council's decision. Where a period of suspension or disqualification is initially imposed by the Appeals Council, such suspension or disqualification shall be effective from the date of the Appeals Council's decision. The decision of the Appeals Council will be in writing and a copy of the decision will be mailed to the individual at his last known address and to the Deputy Commissioner for Programs and Policy, or his or her designee.

[36 FR 23760, Dec. 14, 1971, as amended at 37 FR 17709, Aug. 30, 1972; 62 FR 38454, July 18, 1997]

§ 410.698 Dismissal by Appeals Council.

The Appeals Council may dismiss a request for the review of any proceedings instituted under §410.688 pending before it in any of the following circumstances:

(a) *Upon request of party.* Proceedings pending before the Appeals Council may be discontinued and dismissed upon written application of the party or parties who filed the request for review provided there is no party who objects to discontinuance and dismissal.

(b) *Death of party.* Proceedings before the Appeals Council may be dismissed upon death of a party against whom charges have been preferred.

(c) *Request for review not timely filed.* A request for review of a hearing officer's decision shall be dismissed when the party has failed to file a request for review within the time specified in §410.694 and such time is not extended for good cause.

§ 410.699 Reinstatement after suspension or disqualification.

(a) *General.* An individual shall be automatically reinstated to serve as representative before the Administration at the expiration of any period of suspension. In addition, after 1 year from the effective date of any suspension or disqualification, an individual who has been suspended or disqualified from acting as a representative in proceedings before the Administration may petition the Appeals Council for reinstatement prior to the expiration of a period of suspension or following a disqualification order. The petition for reinstatement shall be accompanied by any evidence the individual wishes to submit. The Appeals Council shall notify the Deputy Commissioner for Programs and Policy, or his or her designee, of the receipt of the petition and grant him 30 days in which to present a written report of any experiences which the Administration may have had with the suspended or disqualified individual during the period subsequent to the suspension or disqualification. A copy of any such report shall be made available to the suspended or disqualified individual.

(b) *Basis of action.* A request for revocation of a suspension or a disqualification shall not be granted unless the Appeals Council is reasonably satisfied that the petitioner is not likely in the future to conduct himself contrary to the provisions of the rules and regulations of the Administration.

(c) *Notice.* Notice of the decision on the request for reinstatement shall be mailed to the petitioner and a copy shall be mailed to the Deputy Commissioner for Programs and Policy, or his or her designee.

(d) *Effect of denial.* If a petition for reinstatement is denied, a subsequent petition for reinstatement shall not be considered prior to the expiration of 1 year from the date of notice of the previous denial.

[36 FR 23760, Dec. 14, 1971, as amended at 62 FR 38454, July 18, 1997]

§ 410.699a Penalties for fraud.

The penalty for any person found guilty of willfully making any false or misleading statement or representation for the purpose of obtaining any benefit or statement or payment under this part shall be:

(a) A fine of up to $1,000, or

(b) Imprisonment for not more than 1 year, or

(c) Both (a) and (b).

(Sec. 411, Federal Coal Mine Health and Safety Act of 1969, as amended; 85 Stat. 793, 30 U.S.C. 921)

[43 FR 34781, Aug. 7, 1978]

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