

Title 20: Employees' Benefits

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS (1969–)

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Subpart B—Requirements for Entitlement; Duration of Entitlement; Filing of Claims and Evidence

Authority: Sec. 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5)), sec. 402, 411, 412, 413, 414, 426(a), and 508, 83 Stat. 792; 30 U.S.C. 902, 921–924, 936(a), 957.

Source: 36 FR 23752, Dec. 14, 1971, unless otherwise noted.

§ 410.200 Types of benefits; general.

(a) Part B of title IV of the Act provides for the payment of periodic benefits:

- (1) To a miner who is determined to be totally disabled due to pneumoconiosis; or
- (2) To the widow or child of a miner who was entitled to benefits at the time of his death, who is determined to have been totally disabled due to pneumoconiosis at the time of his death, or whose death was due to pneumoconiosis; or
- (3) To the child of a widow of a miner who was entitled to benefits at the time of her death; or
- (4) To the surviving dependent parents, or the surviving dependent brothers or sisters, of a miner who is determined to have been entitled to benefits at the time of his death, or who was totally disabled due to pneumoconiosis at the time of his death, or whose death was due to pneumoconiosis.

(b) The following sections of this subpart set out the conditions of entitlement to benefits for a miner, a widow, child, parent, brother, or sister; describe the events which terminate or preclude entitlement to benefits and the procedures for filing a claim; and prescribe certain requirements as to evidence. Also see subpart C of this part for regulations relating to the relationship and dependency requirements applicable to claimants for benefits as a widow, child, parent, brother, or sister, and to beneficiaries with dependents.

[37 FR 20635, Sept. 30, 1972]

§ 410.201 Conditions of entitlement; miner.

An individual is entitled to benefits if such individual:

- (a) Is a miner (see §410.110(j)); and
- (b) Is totally disabled due to pneumoconiosis (see subpart D of this part); and
- (c) Has filed a claim for benefits in accordance with the provisions of §§410.220 through 410.234.

[36 FR 23752, Dec. 14, 1971, as amended at 37 FR 20635, Sept. 30, 1972]

§ 410.202 Duration of entitlement; miner.

(a) An individual is entitled to benefits as a miner for each month beginning with the first month in which all of the conditions of entitlement prescribed in §410.201 are satisfied.

(b) The last month for which such individual is entitled to such benefit is the month before the month:

(1) In which the miner dies (see, however, §410.226); or

(2) In no part of which the miner is under a disability.

(c) A miner's entitlement to benefits under part B of title IV of the Act which is based on a claim which is filed (see §410.227) after June 30, 1973, and before January 1, 1974, shall terminate on December 31, 1973, unless sooner terminated under paragraph (b) of this section.

[36 FR 23752, Dec. 14, 1971, as amended at 37 FR 20635, Sept. 30, 1972]

§ 410.210 Conditions of entitlement; widow or surviving divorced wife.

An individual is entitled to benefits if such individual:

(a) Is the widow (see §410.320) or surviving divorced wife (see §410.321) of a miner (see §410.110(j));

(b) Is not married during her initial month of entitlement (or, for months prior to May 1972, had not remarried since the miner's death);

(c) Has filed a claim for benefits in accordance with the provisions of §§410.220 through 410.234;

(d) Was dependent on the miner at the pertinent time (see §410.360 or §410.361); and

(e) The deceased miner:

(1) Was entitled to benefits at the time of his death; or

(2) Died before January 1, 1974, and it is determined that he was totally disabled due to pneumoconiosis at the time of his death, or that his death was due to pneumoconiosis (see subpart D of this part).

[37 FR 20636, Sept. 30, 1972, as amended at 41 FR 4899, Feb. 3, 1976]

§ 410.211 Duration of entitlement; widow or surviving divorced wife.

(a) An individual is entitled to benefits as a widow, or as a surviving divorced wife, for each month beginning with the first month in which all of the conditions of entitlement prescribed in §410.210 are satisfied. If such individual remarries, payment of benefits ends with the month before the month of remarriage (see paragraph (b) of this section). Should the remarriage subsequently end, payment of benefits may be resumed beginning with the month after December 1973 in which the remarriage ends if the Social Security Administration receives notice in writing within 3 months of the end of such remarriage or within 3 months of February 3, 1976, whichever is later. Where such notice is not provided within the prescribed time period, resumption of payment will begin with the month the individual provides such notice to the Social Security Administration.

(b) The last month for which such individual is entitled to such benefit is the month before the month in which either of the following events first occurs:

(1) The widow or surviving divorced wife dies; or

(2) Where the individual has qualified as the widow of a miner under §410.320 (d), she ceases to so qualify, as provided therein.

(c) Although payment of benefits to a widow or surviving divorced wife ends with the month before the month in which she marries (see paragraph (a) of this section), her entitlement is not terminated by such marriage. However, but solely for purposes of entitlement of a child under §410.212(b), a widow is deemed not entitled to benefits in months for which she is not paid benefits because she is married.

[41 FR 4899, Feb. 3, 1976]

§ 410.212 Conditions of entitlement; child.

(a) An individual is entitled to benefits if such individual:

(1) Is the child or stepchild (see §410.330) of (i) a deceased miner (see §410.110(j)) or (ii) of the widow of a miner who was entitled to benefits at the time of her death (see §§410.210 and 410.211);

(2) Has filed a claim for benefits in accordance with the provisions of §§410.220 through 410.234;

(3) Meets the dependency requirements in §410.370;

(4) If a child of a miner, the deceased miner:

(i) Was entitled to benefits at the time of his death; or

(ii) Died before January 1, 1974, and his death is determined to have been due to pneumoconiosis (see subpart D of this part), or

(iii) Died before January 1, 1974, and it is determined that at the time of his death he was totally disabled by pneumoconiosis (see subpart D of this part).

(b) A child is not entitled to benefits for any month for which a widow of a miner is entitled to benefits, except that (for purposes of entitlement of a child under this section) a widow is deemed not entitled to benefits in months for which she is not paid benefits because she is married (see §410.211). Thus, a child may be entitled to benefits for months wherein such benefits are not payable to the widow because of marriage.

[37 FR 20636, Sept. 30, 1972, as amended at 41 FR 4900, Feb. 3, 1976]

§ 410.213 Duration of entitlement; child.

(a) An individual is entitled to benefits as a child for each month beginning with the first month in which all of the conditions of entitlement prescribed in §410.212 are satisfied.

(b) The last month for which such individual is entitled to or may be paid such benefit is the month before the month in which any one of the following events first occurs:

(1) The child dies;

(2) The child marries;

(3) The child attains age 18 and,

(i) Is not under a disability at that time, and

- (ii) Is not a student (as defined in §410.370) during any part of the month in which he attains age 18;
- (4) If the child's entitlement is based on his status as a student, the earlier of:
 - (i) The first month during no part of which he is a student, or
 - (ii) The month in which he attains age 23 and is not under a disability at that time (but see §410.370(c)(4) for an exception);
- (5) If the child's entitlement is based on disability, the first month in no part of which such individual is under a disability;
- (6) A widow's benefit payment, which was ended because of marriage, is resumed following termination of such marriage. (See §410.211(a)). (In the month before the month in which a widow marries, payment of benefits to her ends and non-payment of such benefits continues for the duration of the marriage. Thereafter, if her remarriage ends, subject to the provisions of §410.211 her benefit payments may be resumed. Should such widow again remarry or die, payment of benefits to such child, if he is otherwise entitled, will be resumed effective with the month of such remarriage or death. In such event no action by or on behalf of such child is required for resumption of payment.)
- (c) A child whose entitlement to benefits terminated with the month before the month in which he attained age 18, or later, may thereafter (provided he is not married) again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month in which he files such application in or after such termination and in which he is a student and has not attained the age of 23.

[37 FR 20636, Sept. 30, 1972, as amended at 41 FR 4900, Feb. 3, 1976]

§ 410.214 Conditions of entitlement; parent, brother, or sister.

An individual is entitled to benefits if:

- (a) Such individual:
 - (1) Is the parent, brother, or sister (see §410.340) of a deceased miner (see §410.110(j));
 - (2) Has filed a claim for benefits in accordance with the provisions of §§410.220 through 410.234;
 - (3) Was dependent on the miner at the pertinent time (see §410.380); and
 - (4) Files proof of support before June 1, 1974, or within 2 years after the miner's death, whichever is later, or it is shown to the satisfaction of the Administration that there is good cause for failure to file such proof within such period (see §410.216).
- (b) In the case of a brother, he also:
 - (1) Is under 18 years of age; or
 - (2) Is 18 years of age or older and is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d) (see subpart P of part 404 of this chapter), which began:
 - (i) Before he attained age 22, however, no entitlement to brother's benefits may be established for any month before January 1973, based on a disability which began after attainment of age 18; or
 - (ii) In the case of a student, before he ceased to be a student (see §410.370(c)); or

(3) Is a student (see §410.370(c)); or

(4) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d) (see subpart P of part 404 of this chapter), at the time of the miner's death.

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the deceased miner:

(1) Was entitled to benefits at the time of his death; or

(2) Died before January 1, 1974, and his death is determined to have been due to pneumoconiosis (see subpart D of this part); or

(3) Died before January 1, 1974, and it is determined that at the time of his death he was totally disabled by pneumoconiosis (see subpart D of this part).

(d) Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section:

(1) A parent is not entitled to benefits if the deceased miner was survived by a widow or child at the time of his death, and

(2) A brother or sister is not entitled to benefits if the deceased miner was survived by a widow, child, or parent at the time of his death.

[37 FR 20636, Sept. 30, 1972, as amended at 41 FR 7091, Feb. 17, 1976]

§ 410.215 Duration of entitlement; parent, brother, or sister.

(a) parent, brother, or sister is entitled to benefits beginning with the month all the conditions of entitlement described in §410.214 are met.

(b) The last month for which such parent is entitled to benefits is the month before the month in which the parent dies.

(c) The last month for which such sister is entitled to benefits is the month before the month in which any of the following events occurs:

(1) She dies;

(2)(i) She marries or remarries; or

(ii) If already married, she receives support in any amount from her spouse.

(d) The last month for which such brother is entitled to benefits is the month before the month in which any of the following events first occurs:

(1) He dies;

(2)(i) He marries or remarries; or

(ii) If already married, he receives support in any amount from his spouse;

(3) He attains age 18 and,

(i) Is not under a disability at that time, and

(ii) Is not a student (see §410.370(c)) during any part of the month in which he attains age 18;

(4) If his entitlement is based on his status as a student, the earlier of:

(i) The first month during no part of which he is a student; or

(ii) The month in which he attains age 23 and is not under a disability at that time;

(5) If his entitlement is based on disability, the first month in no part of which such individual is under a disability.

[37 FR 20636, Sept. 30, 1972]

§ 410.216 “Good cause” for delayed filing of proof of support.

(a) *What constitutes “good cause.”* Good cause may be found for failure to file proof of support within the 2-year period where the parent, brother, or sister establishes to the satisfaction of the Administration that such failure to file was due to:

(1) Circumstances beyond the individual's control, such as extended illness, mental or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished the individual by the Administration; or

(3) Efforts by the individual to secure supporting evidence without a realization that such evidence could be submitted after filing proof of support; or

(4) Unusual or unavoidable circumstances, the nature of which demonstrate that the individual could not reasonably be expected to have been aware of the need to file timely the proof of support.

(b) *What does not constitute “good cause.”* Good cause for failure to file timely such proof of support does not exist when there is evidence of record in the Administration that the individual was informed that he should file within the initial 2-year period and he failed to do so through negligence or intent not to file.

[37 FR 20637, Sept. 30, 1972]

§ 410.219 Filing a claim under State workmen's compensation law; when filing such claim shall be considered futile.

(a) A claimant for benefits under this part must file a claim under the applicable State workmen's compensation law prior to a final decision on his claim for benefits under this part (see §410.227(c)) except where the filing of a claim under such applicable State workmen's compensation law would clearly be futile.

(b) The Administration shall determine that the filing of such a claim would clearly be futile when:

(1) The period within which such a claim may be filed under such law has expired; or

(2) Pneumoconiosis as defined in §410.110(o) is not compensable under such law; or

(3) The maximum amount of compensation or the maximum number of compensation payments allowable under such law has already been paid; or

(4) The claimant does not meet one or more conditions of eligibility for workmen's compensation payments under applicable State law; or

(5) In any other situation the claimant establishes to the satisfaction of the Administration that the filing of a claim on account of pneumoconiosis would result as a matter of law in a denial of his claim for compensation under such law.

(c) To be considered to have complied with the statutory requirement for filing a claim under the applicable State workmen's compensation law, a claimant for benefits under this part must diligently prosecute such State claim.

(d) Where, but for the failure to file a claim under the applicable State workmen's compensation law, an individual's claim for benefits under this part would be allowed, the Administration shall notify the individual in writing of the need to file such State claim as a prerequisite to such allowance. Such claim, when filed within 30 days of the date such notice is mailed to the individual, will be considered to have been filed timely.

(e) Where, on the other hand, a claim has not been filed under the applicable State workmen's compensation law, and the Administration determines that a claim for benefits under this part would be disallowed even if such a State claim were filed, the Administration shall make such determination as may be necessary for the adjudication of the individual's claim for benefits under this part pursuant to §410.610.

[36 FR 23752, Dec. 14, 1971; 36 FR 24214, Dec. 22, 1971. Redesignated at 37 FR 20636, Sept. 30, 1972]

§ 410.220 Claim for benefits; definitions.

For purposes of this part:

(a) *Claim defined.* The term *claim* means a writing asserting a right to benefits by an individual, or by a proper party on his behalf as defined in §410.222, which writing is filed with the Administration in accordance with the regulations in this subpart.

(b) *Application defined.* The term *application* refers only to a writing on a form prescribed in §410.221.

(c) *Claimant defined.* The term *claimant* refers to the individual who has filed a claim for benefits on his own behalf, or on whose behalf a proper party as defined in §410.222 has filed a claim.

(d) *Applicant defined.* The term *applicant* refers to the individual who has filed an application on his own behalf, or on behalf of another, for benefits.

(e) *Execution of claim defined.* The term *to execute a claim* means to complete and sign an application (but, for an exception, see §410.234). Irrespective of who may have prepared or completed the application, it is considered to have been executed by or on behalf of the claimant when it is signed by him or by an individual authorized to do so on his behalf (see §410.222).

(f) *Provisions with respect to claims applicable with respect to requests.* The provisions of §§410.222 through 410.234 (relating to the preparation, execution, or filing of a claim for benefits) are applicable to the preparation, execution, and filing of a written request required under this part, e.g., a request to be selected as representative payee (see §410.581 *et seq.*), a request for separate payment of an augmentation (see §410.511), a request for reconsideration (see §410.622), etc. In such cases, the term *claimant* as used therein refers to the individual filing the request on his own behalf or the individual on whose behalf such request is filed.

[36 FR 23752, Dec. 14, 1971, as amended at 37 FR 20637, Sept. 30, 1972]

§ 410.221 Prescribed application and request forms.

(a) Claims shall be made as provided in this subpart on such application forms and in accordance with such instructions (provided thereon or attached thereto) as are prescribed by the Administration.

(b) The application forms used by the public to file claims for benefits under part B of title IV of the Act are SSA-46 (application for benefits under the Federal Coal Mine Health and Safety Act of 1969 (coal miner's claim of total disability)), SSA-47 (application for benefits under the Federal Coal Mine Health and Safety Act of 1969 (widow's claim)), SSA-48 (application for benefits under the Black Lung Benefits Act of 1972 (child's claim)), and SSA-49 (application for benefits under the Black Lung Act of 1972 (parent's, brother's, or sister's claim)).

(c) The form used by an individual to request that such individual be selected as a representative payee or by a dependent to request that payment be certified to him separately is SSA-50 (Request to be Selected as Payee).

(d) For further information about some of the forms used in the administration of part B of title IV of the Act, see §§422.505(b), 422.515, 422.525, and 422.527 of this chapter.

[37 FR 20637, Sept. 30, 1972]

§ 410.222 Execution of a claim.

The Administration determines who is the proper party to execute a claim in accordance with the following rules:

(a) If the claimant has attained the age of 18, is mentally competent, and is physically able to execute the claim, the claim shall be executed by him. Where, however, paragraph (d) of this section applies, the claim may also be executed by the claimant's legal guardian, committee, or other representative.

(b) If the claimant is between the ages of 16 and 18, is mentally competent, has no legally appointed guardian, committee, or other representative, and is not in the care of any person, such claimant may execute the claim upon filing a statement on the prescribed form indicating capacity to act on his own behalf.

(c) If the claimant is mentally competent but has not attained age 18 and is in the care of a person, the claim may be executed by such person.

(d) If the claimant (regardless of his age) has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian committee, or representative.

(e) If the claimant (regardless of his age) is mentally incompetent or is physically unable to execute the claim, it may be executed by the person who has the claimant in his care or by a legally appointed guardian, committee, or other representative.

(f) Where the claimant is in the care of an institution and is not mentally competent or physically able to execute a claim, the manager or principal officer of such institution may execute the claim.

(g) For good cause shown, the Administration may accept a claim executed by a person other than one described in paragraph (a), (b), (c), (d), (e), or (f) of this section.

[37 FR 20637, Sept. 30, 1972]

§ 410.223 Evidence of authority to execute a claim on behalf of another.

Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of his authority to execute the claim on behalf of such claimant in accordance with the following rules:

(a) If the person executing the claim is the legally appointed guardian, committee, or other legal representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(b) If the person executing the claim is not such a legal representative, the evidence shall be a statement describing his relationship to the claimant, the extent to which he has the care of such claimant, or his position as an officer of the institution of which the claimant is an inmate. The Administration may, at any time, require additional evidence to establish the authority of any such person.

§ 410.224 Claimant must be alive when claim is filed.

For a claim to be effective, the claimant must be alive at the time a properly executed claim (see §410.222) is filed with the Administration (see §410.227). (See §§410.229 and 410.230 concerning the filing of a prescribed application form after submittal of a written statement.)

§ 410.226 Periods for which claims are effective.

(a) *Application effective for entire month of filing.* Benefits are payable for full calendar months. If the claimant meets all the requirements for entitlement to benefits in the same calendar month in which his application is filed, the application will be effective for the whole month. If a miner dies in the first month for which he meets all the requirements for entitlement to benefits, he will, notwithstanding the provisions of §410.202(b), be considered to be entitled to benefits for that month.

(b) *Prospective life of claims.* A claim which is filed before the claimant meets all the requirements for entitlement to such benefits will be deemed a valid claim if the claimant meets such requirements of entitlement (1) before the Administration makes a final decision on such claim or (2) if the claimant has timely requested judicial review of such final decision before such review is completed. If the claimant first meets the requirements for entitlement to benefits in a month after the month of actual filing but before a final administrative or judicial decision is rendered on his claim, his claim will be deemed to have been effectively filed in such first month of entitlement.

(c) *Retroactive life of claims.* Except in the case of a claim for benefits as a surviving child (see §410.212) a claim for benefits has no retroactive effect. (See, however, §410.230.) Generally, a claim for benefits for a surviving child is effective (depending on the first month of eligibility) for up to 12 months preceding the month in which such claim is filed. However, if such claim is filed before December 1972, such claim may be effective retroactively (depending on the first month of eligibility) to December 1969.

[37 FR 20637, Sept. 30, 1972]

§ 410.227 When a claim is considered to have been filed; time and place of filing.

(a) *Date of receipt.* Except as otherwise provided in this part, a claim is considered to have been filed only as of the date it is received at an office of the Administration or by an employee of the Administration who is authorized to receive such claims.

(b) *Date of mailing.* If the claim is deposited in and transmitted by the U.S. mail and the fixing of the date of delivery as the date of filing would result in a loss or impairment of benefit rights, it will be considered to have been filed as of the date of mailing. The date appearing on the postmark (when available and legible) shall be prima facie evidence of the date of mailing. If there is no postmark or it is not legible, other evidence may be used to establish the mailing date.

[36 FR 23752, Dec. 14, 1971, as amended at 37 FR 20637, Sept. 30, 1972]

§ 410.228 Requests and notices to be in writing.

Except as otherwise provided in this part, any request to the Administration for a determination or a decision relating to a person's right to benefits, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this part 410, shall be in writing and shall be signed by the person authorized to execute a claim under §410.222.

§ 410.229 When written statement is considered a claim; general.

(a) *Written statement filed by claimant on his own behalf.* Where an individual files a written statement with the Administration (see §410.227) which indicates an intention to claim benefits, and such statement bears his signature or his mark properly witnessed, the filing of such written statement, unless otherwise indicated by the regulations in this part, shall be considered to be the filing of a claim for benefits: *Provided, That:*

(1) The claimant or a proper party on his behalf (see §410.222) executes a prescribed application form (see §410.221) that is filed with the Administration during the claimant's lifetime and within the period prescribed in paragraph (c)(1) of this section; or

(2) In the case of a claimant who dies prior to the filing of such prescribed application form within the period prescribed in paragraph (c)(1) of this section, a prescribed application form is filed with the Administration within the period prescribed in paragraph (c)(2) of this section by a party acting on behalf of the deceased claimant's estate.

(b) *Written statement filed by individual on behalf of another.* A written statement filed by an individual which indicates an intention to claim benefits on behalf of another person shall, unless otherwise indicated thereon, be considered to be the filing of a claim for such purposes: *Provided, That:*

(1) The written statement bears the signature (or mark properly witnessed) of the individual filing the statement; and

(2) The individual filing the statement is the spouse of the claimant on whose behalf the statement is being filed, or a proper party to execute a claim on behalf of a claimant as determined by §410.222; and

(3) Except as specified in §410.230, a prescribed application form (see §410.221) is executed and filed in accordance with the provisions of paragraph (a) (1) or (2) of this section.

(c) *Period within which prescribed application form must be filed.* After the Administration has received from an individual a written statement as described in paragraph (a) or (b) of this section:

(1) Notice in writing shall be sent to the claimant or to the individual who submitted the written statement on his behalf, stating that an initial determination will be made with respect to such written statement if a prescribed application form executed by the claimant or by a proper party on his behalf (see §410.222), is filed with the Administration within 6 months from the date of such notice; or

(2) If the Administration is notified that the death of such claimant occurred before the mailing of the notice described in paragraph (c)(1) of this section, or within the 6-month period following the mailing of such notice but before the filing of a prescribed application form by or on behalf of such individual, notification in writing shall be sent to a person acting on behalf of his estate, or to the deceased's last known address. Such notification will include information that an initial determination with respect to such written statement will be made only if a prescribed application form is filed within 6 months from the date of such notification.

(3) If, after the notice as described in this paragraph (c) has been sent, a prescribed application form is not filed (in accordance with the provisions of paragraph (a) or (b) of this section) within the applicable period prescribed in paragraph (c)(1) or (c)(2) of this section, it will be deemed that the filing of the written statement to which such notice refers is not to be considered the filing of a claim for the purposes set forth in paragraphs (a) and (b) of this section.

[36 FR 23752, Dec. 14, 1971, as amended at 39 FR 41525, Nov. 29, 1974]

§ 410.230 Written statement filed by or for a miner on behalf of a member of his family.

Notwithstanding the provisions of §410.229, the Social Security Administration will take no action with respect to a written statement filed by or for a miner on behalf of a member of his family until such miner's death. At such time, the provisions of §410.229 shall apply as if such miner's claim on behalf of a member of his family had been filed on the day of the miner's death. However, for purposes of paying benefits to an otherwise entitled survivor of a miner, such written statement will be considered to be a valid claim for

benefits (see §§410.210(c) and 410.212(a)(2)) where such member of his family qualified as a dependent for purposes of augmentation of the miner's benefits prior to his death. In such case the member of his family is not required to file a prescribed application form (see §410.221) with the Social Security Administration (see §410.229(b)). Nevertheless, the survivor beneficiary may be required to furnish supplemental information within 6 months of notification to do so. If such beneficiary fails to furnish the information requested within 6 months of notice to do so, benefits may be suspended, after notice of such proposed action and opportunity to be heard is provided the beneficiary. A subsequent determination to suspend benefits shall be an initial determination (see §410.610).

[39 FR 41525, Nov. 29, 1974]

§ 410.231 Time limits for filing claims.

(a) A claim by or on behalf of a miner must be filed on or before December 31, 1973, and when so filed, is a claim for benefits under part B of title IV of the Act. (See §410.227 for when a claim is considered to have been filed. See also §410.202(c) for the duration of entitlement to benefits of a miner based on a claim for such benefits which is filed after June 30, 1973, and before January 1, 1974.)

(b) In the case of a miner who was entitled to benefits for the month before the month of his death, or died in the first month for which he met all the requirements for entitlement (see §410.226), a claim for benefits by or on behalf of the widow, child, parent, brother, or sister of a miner must be filed by December 31, 1973, or within 6 months after the miner's death, whichever is later. When so filed, it constitutes a claim for benefits under part B of title IV of the Act.

(c) In the case of a miner who was not entitled to benefits for the month before the month of his death, and whose death occurred prior to January 1, 1974, a claim for benefits by or on behalf of the widow, child, parent, brother, or sister of a miner must be filed by December 31, 1973, or, in the case of the death of a miner occurring after June 30, 1973, and before January 1, 1974, within 6 months of such miner's death. When so filed, it constitutes a claim for benefits under part B of title IV of the Act.

(d) Notwithstanding the provisions of paragraphs (b) and (c) of this section, if a widow established entitlement to benefits under this part (see §410.210), a claim by or on behalf of a surviving child of a miner or of such widow, must be filed within 6 months after the death of such miner or of such widow, or by December 31, 1973, whichever is the later.

[37 FR 20637, Sept. 30, 1972]

§ 410.232 Withdrawal of a claim.

(a) *Before adjudication of claim.* A claimant (or an individual who is authorized to execute a claim on his behalf under §410.222), may withdraw his previously filed claim provided that:

- (1) He files a written request for withdrawal.
- (2) The claimant is alive at the time the request for withdrawal is filed,
- (3) The Administration approves the request for withdrawal, and
- (4) The request for withdrawal is filed on or before the date the Administration makes a determination on the claim.

(b) *After adjudication of claim.* A claim for benefits may be withdrawn by a written request filed after the date the Administration makes a determination on the claim provided that:

- (1) The conditions enumerated in paragraphs (a) (1) through (3) of this section are met; and

(2) There is repayment of the amount of benefits previously paid because of the claim that is being withdrawn or it can be established to the satisfaction of the Administration that repayment of any such amount is assured.

(c) *Effect of withdrawal of claim.* Where a request for withdrawal of a claim is filed and such request for withdrawal is approved by the Administration, such claim will be deemed not to have been filed. After the withdrawal (whether made before or after the date the Administration makes a determination) further action will be taken by the Administration only upon the filing of a new claim, except as provided in §410.233.

§ 410.233 Cancellation of a request for withdrawal.

Before or after a written request for withdrawal has been approved by the Administration, the claimant (or a person who is authorized under §410.222 to execute a claim on his behalf) may request that the "request for withdrawal" be canceled and that the withdrawn claim be reinstated. Such request for cancellation must be in writing and must be filed, in a case where the requested withdrawal was approved by the Administration, no later than 60 days after such approval. The claimant must be alive at the time the request for cancellation of the "request for withdrawal" is filed with the Administration.

§ 410.234 Interim provisions.

(a) Notwithstanding any other provision of this subpart, a written request for benefits which is filed before January 31, 1972, and which meets the requirements of this subpart except for the filing of a prescribed application form, shall be considered a claim for benefits. Nevertheless, where a prescribed application form has not been filed, the Administration may require that such a form be completed and filed before adjudicating the claim. (See §410.240(a).)

(b) Notwithstanding any other provision of this part, where (1) a request has been made before the effective date of this regulation that a claim for benefits be withdrawn and (2) such request has been approved (see §410.232), such claim may nevertheless be reinstated and adjudicated under the provisions of the Black Lung Benefits Act of 1972 (Pub. L. 92-303).

[37 FR 20638, Sept. 30, 1972]

§ 410.240 Evidence.

(a) *Evidence of eligibility.* A claimant for benefits shall submit such evidence of eligibility as is specified in this section. The Administration may at any time require additional evidence to be submitted with regard to entitlement or the right to receive payment.

(b) *Insufficient evidence of eligibility.* Whenever a claimant for benefits has submitted no evidence or insufficient evidence of eligibility, the Administration will inform the claimant what evidence is necessary for a determination of eligibility and will request him to submit such evidence within a specified reasonable time which may be extended for a further reasonable time upon the claimant's request.

(c) *Reports by beneficiary; evidence of nonoccurrence of termination, suspension, or reduction event.* Any individual entitled to a benefit who is aware of any circumstance which, under the provisions of this part could affect his entitlement to benefits, his eligibility for payment, or the amount of his benefit, or result in the termination, suspension, or reduction of his benefit, shall promptly report such circumstance to the Administration. The Administration may at any time require an individual receiving, or claiming that he is entitled to receive, a benefit, either on behalf of himself or on behalf of another, to submit a written statement giving pertinent information bearing upon the issue of whether or not an event has occurred which would cause such benefit to be terminated, or which would subject such benefit to reductions or suspension under the provisions of the Act. The failure on the part of such individual to submit any such report or statement, properly executed, to the Administration, shall subject such benefit to reductions, suspension, or termination, as the case may be.

(d) *Place and manner of submitting evidence.* Evidence in support of a claim shall be filed at an office of the Administration or with an employee of the Administration authorized to receive such evidence at a place

other than such office. Such evidence may be submitted as part of a prescribed application form if the form provides for its inclusion, or it may be submitted in addition to such prescribed form and in the manner indicated in this section.

(e) *Certification of evidence by authorized individual.* In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of any such record or by an employee of the Administration authorized to make certifications of any such evidence.

(f) *Evidence of total disability or death due to pneumoconiosis.* For evidence requirements to support allegations of total disability or death due to pneumoconiosis; for the effect of the failure or refusal of an individual to present himself for an examination or test in connection with the alleged disability, or to submit evidence of disability; and for evidence as to the cessation of disability, see subpart D of this part 410.

(g) *Evidence of matters other than total disability or death due to pneumoconiosis.* With respect to the following matters, evidence shall be submitted in accordance with the provisions of Regulations No. 4 (part 404 of this chapter) cited hereinafter, as if the claim for benefits under the Act were an application for benefits under section 202 of the Social Security Act. Evidence as to:

(1) *Age:* §§404.715 through 404.716 of this part;

(2) *Death:* §§404.720 through 404.722 of this part;

(3) *Marriage and termination of marriage:* §§404.723 through 404.728 of this part;

(4) *Relationship of parent and child:* §§404.730 through 404.750 of this part;

(5) *Domicile:* §404.770 of this part;

(6) *Living with or member of the same household:* §404.760 of this part.

(h) *Reimbursement for reasonable expenses in obtaining medical evidence.* Claimants for benefits under this part shall be reimbursed promptly for reasonable medical expenses incurred by them for services from medical sources of their choice, in establishing their claims, including the reasonable and necessary cost of travel incident thereto. A medical expense generally is not "reasonable" when the medical evidence for which the expense was incurred is of no value in the adjudication of a claim. Medical evidence will then be considered to be of "no value" when, for instance, it is wholly duplicative or when it is wholly extraneous to the medical issue of whether the claimant is disabled or died due to pneumoconiosis. In order to minimize inconvenience and possible expense to the claimant, he should not generally incur any medical expense for which he intends to claim reimbursement without first contacting the district office to determine what types of evidence not already available to the Administration may be useful in adjudicating his claim, what types of medical evidence may be reimbursable, and what would constitute a "reasonable medical expense" in a given case. However, a claimant's failure to contact the Administration before the expense is incurred will not preclude the Administration from later approving reimbursal for any reasonable medical expense. Where a reasonable expense for medical evidence is ascertained, the Administration may authorize direct payment to the provider of such evidence.

[36 FR 23752, Dec. 14, 1971, as amended at 37 FR 20638, Sept. 30, 1972; 65 FR 16814, Mar. 30, 2000]

§ 410.250 Effect of conviction of felonious and intentional homicide on entitlement to benefits.

An individual who has been finally convicted by a court of competent jurisdiction of the felonious and intentional homicide of a miner or of a widow shall not be entitled to receive any benefits payable because of the death of such miner or widow, and such felon shall be considered nonexistent in determining the entitlement to benefits of other individuals with respect to such miner or widow.

[37 FR 20638, Sept. 30, 1972]

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