

§ 220.184

in his or her file shows. If it is because of the annuitant's work activity, the notice will tell the annuitant what information the Board has about the work he or she is doing or has done, and why this work shows that he or she is not disabled. If it is because of the annuitant's failure to give the Board information the Board needs or failure to do what the Board asks, the notice will tell the annuitant what information the Board needs and why, or what the annuitant has to do and why;

(2) The date the disability annuity will stop;

(3) An opportunity for the annuitant to submit evidence within a specified period to support continuance of disability before the decision becomes final; and

(4) An explanation of the annuitant's rights to reconsideration and appeal after the decision becomes final.

(c) *What the annuitant should do if he or she receives an advance written notice.* If the annuitant agrees with the advance written notice, he or she does not need to take any action. If the annuitant desires further information or disagrees with what the Board has told him or her, the annuitant should immediately write or visit a Board office. If the annuitant believes he or she is now disabled, the annuitant should tell the Board why. The annuitant may give the Board any additional or new information, including reports from doctors, hospitals, railroad or non-railroad employers, or others that he or she believes the Board should have. The annuitant should send these as soon as possible to a Board office.

(d) *When the Board will not give the annuitant advance written notice.* The Board will not give the annuitant advance written notice when the Board determines that he or she is not now disabled if the Board recently told the annuitant that—

(1) The information the Board has shows that he or she is not disabled;

(2) The Board was gathering more information; and

(3) The disability annuity would stop.

§ 220.184 If the annuitant becomes disabled by another impairment(s).

If a new severe impairment(s) begins in or before the month in which the

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last impairment(s) ends, the Board will find that disability is continuing. The impairment(s) need not be expected to last 12 months or to result in death, but it must be severe enough to keep the annuitant from doing substantial gainful activity, or severe enough so that he or she is still disabled.

§ 220.185 The Board may conduct a review to find out whether the annuitant continues to be disabled.

After the Board finds that the annuitant is disabled, the Board must evaluate the annuitant's impairment(s) from time to time to determine if the annuitant is still eligible for disability cash benefits. The Board calls this evaluation a continuing disability review. The Board may begin a continuing disability review for any number of reasons including the annuitant's failure to follow the provisions of the Railroad Retirement Act or these regulations. When the Board begins such a review, the Board will notify the annuitant that the Board is reviewing the annuitant's eligibility for disability benefits, why the Board is reviewing the annuitant's eligibility, that in medical reviews the medical improvement review standard will apply, that the Board's review could result in the termination of the annuitant's benefits, and that the annuitant has the right to submit medical and other evidence for the Board's consideration during the continuing disability review. In doing a medical review the Board will develop a complete medical history of at least the preceding 12 months in any case in which a determination is made that the annuitant is no longer under a disability. If this review shows that the Board should stop payment of cash benefits, the Board will notify the annuitant in writing and give the annuitant an opportunity to appeal. In § 220.186 the Board describes those events that may prompt it to review whether the annuitant continues to be disabled.

§ 220.186 When and how often the Board will conduct a continuing disability review.

(a) *General.* The Board conducts continuing disability reviews to determine whether or not the annuitant continues

to meet the disability requirements of the law. Payment of cash benefits for a period of disability ends if the medical or other evidence shows that the annuitant is not disabled under the standards set out in section 2 of the Railroad Retirement Act or section 223(f) of the Social Security Act.

(b) *When the Board will conduct a continuing disability review.* A continuing disability review will be started if—

(1) The annuitant has been scheduled for a medical improvement expected diary review;

(2) The annuitant has been scheduled for a periodic review in accordance with the provisions of paragraph (d) of this section;

(3) The Board needs a current medical or other report to see if the annuitant's disability continues. (This could happen when, for example, an advance in medical technology, such as improved treatment for Alzheimer's disease or a change in vocational therapy or technology raises a disability issue.);

(4) The annuitant returns to work and successfully completes a period of trial work;

(5) Substantial earnings are reported to the annuitant's wage record;

(6) The annuitant tells the Board that he or she has recovered from his or her disability or that he or she has returned to work;

(7) A State Vocational Rehabilitation Agency tells the Board that—

(i) The services have been completed; or

(ii) The annuitant is now working; or

(iii) The annuitant is able to work;

(8) Someone in a position to know of the annuitant's physical or mental condition tells the Board that the annuitant is not disabled, that the annuitant is not following prescribed treatment, that the annuitant has returned to work, or that the annuitant is failing to follow the provisions of the Social Security Act, the Railroad Retirement Act, or these regulations, and it appears that the report could be substantially correct; or

(9) Evidence the Board receives raises a question as to whether the annuitant's disability continues.

(c) *Definitions.* As used in this section—

Medical improvement expected diary—refers to a case which is scheduled for review at a later date because the individual's impairment(s) is expected to improve. Generally, the diary period is set for not less than 6 months or for not more than 18 months. Examples of cases likely to be scheduled for a medical improvement expected diary are fractures and cases in which corrective surgery is planned and recovery can be anticipated. The term "medical improvement expected diary" also includes a case which is scheduled for a review at a later date because the individual is undergoing vocational therapy, training or an educational program which may improve his or her ability to work so that the disability requirement of the law is no longer met. Generally, the diary period will be the length of the training, therapy, or program of education.

Permanent impairment medical improvement not expected—refers to a case in which any medical improvement in the person's impairment(s) is not expected. This means an extremely severe condition determined on the basis of our experience in administering the disability program to be at least static, but more likely to be progressively disabling either by itself or by reason of impairment complications, and unlikely to improve so as to permit the individual to engage in substantial gainful activity. The interaction of the individual's age, impairment consequences and lack of recent attachment to the labor market may also be considered in determining whether an impairment is permanent. Improvement which is considered temporary under §220.178(c)(3), will not be considered in deciding if an impairment is permanent. Examples of permanent impairments are as follows and are not intended to be all inclusive:

(1) Parkinsonian syndrome with significant rigidity, brady kinesia, or tremor in two extremities, which, singly or in combination, result in sustained disturbance of gross and dexterous movements, or gait and station.

(2) Amyotrophic lateral sclerosis, based on documentation of a clinically appropriate medical history, neurological findings consistent with the diagnosis of ALS, and the results of any

electrophysiological and neuroimaging testing.

(3) Diffuse pulmonary fibrosis in an individual age 55 or older which reduces FEV1 to 1.45 to 2.05 (L, BTPS) or less depending on the individual's height.

(4) Amputation of leg at hip.

Nonpermanent impairment refers to a case in which any medical improvement in the person's impairment(s) is possible. This means an impairment for which improvement cannot be predicted based on current experience and the facts of the particular case but which is not at the level of severity of an impairment that is considered permanent. Examples of nonpermanent impairments are: regional enteritis, hyperthyroidism, and chronic ulcerative colitis.

(d) *Frequency of review.* If an annuitant's impairment is expected to improve, generally the Board will review the annuitant's continuing eligibility for disability benefits at intervals from 6 months to 18 months following the Board's most recent decision. The Board's notice to the annuitant about the review of the annuitant's case will tell the annuitant more precisely when the review will be conducted. If the annuitant's disability is not considered permanent but is such that any medical improvement in the annuitant's impairment(s) cannot be accurately predicted, the Board will review the annuitant's continuing eligibility for disability benefits at least once every 3 years. If no medical improvement is expected in the annuitant's impairment(s), the Board will not routinely review the annuitant's continuing eligibility. Regardless of the annuitant's classification, the Board will conduct an immediate continuing disability review if a question of continuing disability is raised pursuant to paragraph (b) of this section.

(e) *Change in classification of impairment.* If the evidence developed during a continuing disability review demonstrates that the annuitant's impairment has improved, is expected to improve, or has worsened since the last review, the Board may reclassify the annuitant's impairment to reflect this change in severity. A change in the classification of the annuitant's im-

pairment will change the frequency with which the Board will review the case. The Board may also reclassify certain impairments because of improved tests, treatment, and other technical advances concerning those impairments.

(f) *Review after administrative appeal.* If the annuitant was found eligible to receive or to continue to receive disability benefits on the basis of a decision by a hearings officer, the three-member Board or a Federal court, the agency will not conduct a continuing disability review earlier than 3 years after that decision unless the annuitant's case should be scheduled for a medical improvement expected or vocational reexamination diary review or a question of continuing disability is raised pursuant to paragraph (b) of this section.

(g) *Waiver of timeframes.* All cases involving a nonpermanent impairment will be reviewed by the Board at least once every 3 years unless the Board determines that the requirements should be waived to ensure that only the appropriate number of cases are reviewed. The appropriate number of cases to be reviewed is to be based on such considerations as the backlog of pending reviews, the projected number of new applications, and projected staffing levels. Therefore, an annuitant's continuing disability review may be delayed longer than 3 years following the Board's original decision or other review under certain circumstances. Such a delay would be based on the Board's need to ensure that backlogs, and new disability claims workloads are accomplished within available medical and other resources and that such reviews are done carefully and accurately.

[56 FR 12980, Mar. 28, 1991, as amended at 65 FR 20372, Apr. 17, 2000; 74 FR 63603, Dec. 4, 2009]

§ 220.187 If the annuitant's medical recovery was expected and the annuitant returned to work.

If the annuitant's impairment was expected to improve and the annuitant returned to full-time work with no significant medical limitations and acknowledges that medical improvement has occurred, the Board may find that