

§ 404.1595

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(8) The first month in which you failed without good cause to follow prescribed treatment, when the rule set out in paragraph (e)(4) of this section applies; or

(9) The first month you were told by your physician that you could return to work, provided there is no substantial conflict between your physician's and your statements regarding your awareness of your capacity for work and the earlier date is supported by substantial evidence.

(h) *Before we stop your benefits.* Before we stop your benefits or a period of disability, we will give you a chance to explain why we should not do so. Sections 404.1595 and 404.1597 describe your rights (including appeal rights) and the procedures we will follow.

(i) *If you work during your current period of entitlement based on disability or during certain other periods.* (1) We will not consider the work you are doing or have done during your current period of entitlement based on disability (or, when determining whether you are entitled to expedited reinstatement of benefits under section 223(i) of the Act, the work you are doing or have done during or after the previously terminated period of entitlement referred to in section 223(i)(1)(B) of the Act) to be past relevant work under paragraph (f)(7) of this section or past work experience under paragraph (f)(8) of this section. In addition, if you are currently entitled to disability benefits under title II of the Social Security Act, we may or may not consider the physical and mental activities that you perform in the work you are doing or have done during your current period of entitlement based on disability, as explained in paragraphs (i)(2) and (3) of this section.

(2) If you are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act, and at the time we are making a determination on your case you have received such benefits for at least 24 months, we will not consider the activities you perform in the work you are doing or have done during your current period of entitlement based on

disability if they support a finding that your disability has ended. (We will use the rules in § 404.1590(i)(2) to determine whether the 24-month requirement is met.) However, we will consider the activities you do in that work if they support a finding that your disability continues or they do not conflict with a finding that your disability continues. We will not presume that you are still disabled if you stop working.

(3) If you are not a person described in paragraph (i)(2) of this section, we will consider the activities you perform in your work at any of the evaluation steps in paragraph (f) of this section at which we need to assess your ability to function.

[50 FR 50130, Dec. 6, 1985; 51 FR 7063, Feb. 28, 1986; 51 FR 16015, Apr. 30, 1986, as amended at 52 FR 44971, Nov. 24, 1987; 57 FR 30121, July 8, 1992; 59 FR 1635, Jan. 12, 1994; 65 FR 42788, July 11, 2000; 68 FR 51163, Aug. 26, 2003; 71 FR 66857, Nov. 17, 2006]

§ 404.1595 When we determine that you are not now disabled.

(a) *When we will give you advance notice.* Except in those circumstances described in paragraph (d) of this section, we will give you advance notice when we have determined that you are not now disabled because the information we have conflicts with what you have told us about your disability. If your dependents are receiving benefits on your Social Security number and do not live with you, we will also give them advance notice. To give you advance notice, we will contact you by mail, telephone or in person.

(b) *What the advance notice will tell you.* We will give you a summary of the information we have. We will also tell you why we have determined that you are not now disabled, and will give you a chance to reply. If it is because of—

(1) *Medical reasons.* The advance notice will tell you what the medical information in your file shows;

(2) *Your work activity.* The advance notice will tell you what information we have about the work you are doing or have done, and why this work shows that you are not disabled; or

(3) *Your failure to give us information we need or do what we ask.* The advance notice will tell you what information

we need and why we need it or what you have to do and why.

(c) *What you should do if you receive an advance notice.* If you agree with the advance notice, you do not need to take any action. If you desire further information or disagree with what we have told you, you should immediately write or telephone the State agency or the social security office that gave you the advance notice or you may visit any social security office. If you believe you are now disabled, you should tell us why. You may give us any additional or new information, including reports from your doctors, hospitals, employers or others, that you believe we should have. You should send these as soon as possible to the local social security office or to the office that gave you the advance notice. We consider 10 days to be enough time for you to tell us, although we will allow you more time if you need it. You will have to ask for additional time beyond 10 days if you need it.

(d) *When we will not give you advance notice.* We will not give you advance notice when we determine that you are not disabled if—

(1) We recently told you that the information we have shows that you are not now disabled, that we were gathering more information, and that your benefits will stop; or

(2) We are stopping your benefits because you told us you are not now disabled; or

(3) We recently told you that continuing your benefits would probably cause us to overpay you and you asked us to stop your benefits.

§ 404.1596 Circumstances under which we may suspend and terminate your benefits before we make a determination.

(a) *General.* Under some circumstances, we may stop your benefits before we make a determination. Generally, we do this when the information we have clearly shows you are not now disabled but we cannot determine when your disability ended. These situations are described in paragraph (b)(1) and other reasons are given in paragraph (b)(2) of this section. We refer to this as a suspension of benefits. Your benefits, as well as those of your dependents (re-

gardless of where they receive their benefits), may be suspended. When we do this we will give you advance notice. (See § 404.1595.) We will contact your spouse and children if they are receiving benefits on your Social Security number, and the benefits are being mailed to an address different from your own.

(b) *When we will suspend your benefits—(1) You are not now disabled.* We will suspend your benefits if the information we have clearly shows that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when—

(i) New medical or other information clearly shows that you are able to do substantial gainful activity and your benefits should have stopped more than 2 months ago;

(ii) You completed a 9-month period of trial work more than 2 months ago and you are still working;

(iii) At the time you filed for benefits your condition was expected to improve and you were expected to be able to return to work. You subsequently did return to work more than 2 months ago with no significant medical restrictions; or

(iv) You are not entitled to a trial work period and you are working.

(2) *Other reasons.* We will also suspend your benefits if—

(i) You have failed to respond to our request for additional medical or other evidence and we are satisfied that you received our request and our records show that you should be able to respond; or

(ii) We are unable to locate you and your checks have been returned by the Post Office as undeliverable.

(c) *When we will not suspend your cash benefits.* We will not suspend your cash benefits if—

(1) You have become disabled by another impairment; or

(2) Even though your impairment is no longer disabling,

(i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);