

## Social Security Administration

## § 404.1720

(2) Requests for information or evidence.

(b) A notice or request sent to your representative, will have the same force and effect as if it had been sent to you.

### § 404.1717 Demonstration project on direct payment of fees to non-attorneys.

(a) Section 303 of the Social Security Protection Act of 2004 (SSPA), Public Law 108-203, requires the Commissioner of Social Security (Commissioner) to develop and implement a 5-year nationwide demonstration project that extends attorney fee withholding and direct payment procedures to any non-attorney representative who meets minimum prerequisites for participating in the project specified in section 303 of the SSPA and any additional prerequisites prescribed by the Commissioner. The objective of the demonstration project is to determine the effect of extending to certain non-attorneys the fee withholding and direct payment procedures that apply to attorneys. A final report on the results of the demonstration project is to be completed and transmitted to Congress within 90 days of the project termination date, February 28, 2010.

(b) As used in this subpart, the term “eligible to participate in the direct payment demonstration project” refers to the status of a non-attorney who we have determined meets the prerequisites for participation in the demonstration project.

(c) The provisions of section 303 authorizing the direct payment of fees to non-attorneys and the withholding of title II benefits for that purpose apply in claims for benefits with respect to which the agreement for representation is entered into after February 27, 2005, and before March 1, 2010.

[72 FR 16724, Apr. 5, 2007]

### § 404.1720 Fee for a representative’s services.

(a) *General.* A representative may charge and receive a fee for his or her services as a representative only as provided in paragraph (b) of this section.

(b) *Charging and receiving a fee.* (1) The representative must file a written

request with us before he or she may charge or receive a fee for his or her services.

(2) We decide the amount of the fee, if any, a representative may charge or receive.

(3) Subject to paragraph (e) of this section, a representative must not charge or receive any fee unless we have authorized it, and a representative must not charge or receive any fee that is more than the amount we authorize.

(4) If your representative is an attorney, or a non-attorney who is eligible to participate in the direct payment demonstration project, as defined in § 404.1717, and you are entitled to past-due benefits, as defined in § 404.1703, we will pay the authorized fee, or a part of the authorized fee, directly to the representative out of the past-due benefits, subject to the limitations described in § 404.1730(b)(1). If the representative is a non-attorney who is not eligible to participate in the direct payment demonstration project, we assume no responsibility for the payment of any fee that we have authorized.

(c) *Notice of fee determination.* We shall mail to both you and your representative at your last known address a written notice of what we decide about the fee. We shall state in the notice—

(1) The amount of the fee that is authorized;

(2) How we made that decision;

(3) Whether we are responsible for paying the fee from past-due benefits; and

(4) That within 30 days of the date of the notice, either you or your representative may request us to review the fee determination.

(d) *Review of fee determination—*(1) *Request filed on time.* We will review the decision we made about a fee if either you or your representative files a written request for the review at one of our offices within 30 days after the date of the notice of the fee determination. Either you or your representative, whoever requests the review, shall mail a copy of the request to the other person. An authorized official of the Social Security Administration who did not take part in the fee determination

being questioned will review the determination. This determination is not subject to further review. The official shall mail a written notice of the decision made on review both to you and to your representative at your last known address.

(2) *Request not filed on time.* (i) If you or your representative requests a review of the decision we made about a fee, but does so more than 30 days after the date of the notice of the fee determination, whoever makes the request shall state in writing why it was not filed within the 30-day period. We will review the determination if we decide that there was good cause for not filing the request on time.

(ii) Some examples of good cause follow:

(A) Either you or your representative was seriously ill and the illness prevented you or your representative from contacting us in person or in writing.

(B) There was a death or serious illness in your family or in the family of your representative.

(C) Material records were destroyed by fire or other accidental cause.

(D) We gave you or your representative incorrect or incomplete information about the right to request review.

(E) You or your representative did not timely receive notice of the fee determination.

(F) You or your representative sent the request to another government agency in good faith within the 30-day period, and the request did not reach us until after the period had ended.

(3) *Payment of fees.* We assume no responsibility for the payment of a fee based on a revised determination if the request for administrative review was not filed on time.

(e) *When we do not need to authorize a fee.* We do not need to authorize a fee when:

(1) An entity or a Federal, State, county, or city government agency pays from its funds the representative fees and expenses and both of the following conditions apply:

(i) You and your auxiliary beneficiaries, if any, are not liable to pay a fee or any expenses, or any part thereof, directly or indirectly, to the representative or someone else; and

(ii) The representative submits to us a writing in the form and manner that we prescribe waiving the right to charge and collect a fee and any expenses from you and your auxiliary beneficiaries, if any, directly or indirectly, in whole or in part; or

(2) A court authorizes a fee for your representative based on the representative's actions as your legal guardian or a court-appointed representative.

[45 FR 52090, Aug. 5, 1980, as amended at 72 FR 16724, Apr. 5, 2007; 74 FR 48384, Sept. 23, 2009]

**§ 404.1725 Request for approval of a fee.**

(a) *Filing a request.* In order for your representative to obtain approval of a fee for services he or she performed in dealings with us, he or she shall file a written request with one of our offices. This should be done after the proceedings in which he or she was a representative are completed. The request must contain—

(1) The dates the representative's services began and ended;

(2) A list of the services he or she gave and the amount of time he or she spent on each type of service;

(3) The amount of the fee he or she wants to charge for the services;

(4) The amount of fee the representative wants to request or charge for his or her services in the same matter before any State or Federal court;

(5) The amount of and a list of any expenses the representative incurred for which he or she has been paid or expects to be paid;

(6) A description of the special qualifications which enabled the representative, if he or she is not an attorney, to give valuable help in connection with your claim; and

(7) A statement showing that the representative sent a copy of the request for approval of a fee to you.

(b) *Evaluating a request for approval of a fee.* (1) When we evaluate a representative's request for approval of a fee, we consider the purpose of the social security program, which is to provide a measure of economic security for the beneficiaries of the program, together with—

(i) The extent and type of services the representative performed;