§ 405.5  

Judge’s decision or with the administrative law judge’s dismissal of a hearing request, you may request that the Appeals Council review that action. The Appeals Council also may initiate review on its own motion. The Appeals Council will use the procedures in subparts E through G of this part for its review.

(5) Federal court review. If you have pursued your claim through all levels of our administrative process and are dissatisfied with our final decision, you may request judicial review by filing an action in Federal district court.

(c) Nature of the administrative review process—(1) Non-adversarial proceeding. In making a determination or decision on your claim, we conduct the administrative review process in a non-adversarial manner.

(2) Evidence considered and right to representation. Subject to §§ 405.331 and 405.430, you may present and we will consider information in support of your claim. We also will consider any relevant information that we have in our records. To help you present your claim to us, you may have someone represent you, including an attorney.

(3) Evidentiary standards applied. When we make a determination or decision on your disability claim, we will apply a preponderance of the evidence standard, except that the Appeals Council will review findings of fact under the substantial evidence standard.

(4) Clarity of determination or decision. When we adjudicate your claim, the notice of our determination or decision will explain in clear and understandable language the specific reasons for allowing or denying your claim.

(5) Consequences of failing to timely follow this administrative appeals process. If you do not seek timely review at the next step required by these procedures, you will lose your right to further administrative review and your right to judicial review, unless you can show good cause under § 405.20 for your failure to request timely review.

(d) Expedited appeals process. You may use the expedited appeals process if you have no dispute with our findings of fact and our application and interpretation of the controlling law, but you believe that a part of that law is unconstitutional. This process permits you to seek our agreement to allow you to go directly to a Federal district court so that the constitutional issue(s) may be resolved.


§ 405.5 Definitions.

As used in this part:

Act means the Social Security Act, as amended.

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105 who is employed by the Social Security Administration.

Commissioner means the Commissioner of Social Security, or his or her designee.

Date you receive notice means five days after the date on the notice, unless you show us that you did not receive it within the five-day period.

Day means calendar day, unless otherwise indicated.

Decision means the decision made by an administrative law judge, attorney advisor, or the Appeals Council.

Disability claim or claim means:

(1) An application for benefits that is based on whether you are disabled under title II of the Act, or

(2) An application for supplemental security income payments that is based on whether you are disabled or blind under title XVI of the Act.

(3) For purposes of this part, the terms “disability claim” or “claim” do not include a continuing disability review or age-18 redetermination.

Document includes books, records, correspondence, papers, as well as forms of electronic media such as video tapes, CDs, and DVDs.

Evidence means evidence as defined under §§ 404.1512 and 416.912 of this chapter.

Preponderance of the evidence means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Vacate means to set aside a previous action.
We, us, or our refers to the Social Security Administration.
You or your refers to the person who has filed a disability claim and, where appropriate, his or her authorized representative.

§ 405.10 [Reserved]
§ 405.20 Good cause for extending deadlines.
(a) If you want us to extend the deadline to request administrative or judicial review, you must establish that there is good cause for missing the deadline. To establish good cause, you must show us that—
(1) Our action misled you;
(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from filing a timely request; or
(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from filing a timely request.
(b) Examples of circumstances that, if documented, may establish good cause include, but are not limited to, the following:
(1) You were seriously ill, and your illness prevented you from contacting us in person, in writing, or through a friend, relative, or other person;
(2) There was a death or serious illness in your immediate family;
(3) Important records were destroyed or damaged by fire or other accidental cause;
(4) You were trying very hard to find necessary information to support your claim but did not find the information within the stated time period;
(5) Within the time limit for requesting further review, you asked us for additional information explaining our action, and within 60 days of receiving the explanation, you requested a review;
(6) We gave you incorrect or incomplete information about when and how to request administrative review or to file a civil suit;
(7) You did not receive notice of the determination or decision; or
(8) You sent the request to another Government agency in good faith within the time limit, and the request did not reach us until after the time period had expired.

§ 405.25 Disqualification of disability adjudicators.
Adjudicators at all levels of the administrative review process recognize the need for fair and impartial consideration of the merits of your claim. Any adjudicator who has any personal or financial interest in the matter pending for determination or decision will withdraw from conducting any proceeding with respect to your disability claim. If the adjudicator so withdraws, we will assign your claim to another adjudicator for a determination or decision.

§ 405.30 Discrimination complaints.
At all levels of the administrative review process, we do not give inappropriate consideration to your race, color, national origin, age, sex, religion, or nature of your impairment(s). If you believe that an adjudicator has improperly discriminated against you, you may file a discrimination complaint with us. You must file any such complaint within 180 days of the date upon which you became aware that you may have been discriminated against.

APPENDIX TO SUBPART A OF PART 405—CLAIMS THAT WILL BE HANDLED UNDER THE PROCEDURES IN THIS PART
(a) We will apply the procedures in this part to disability claims (as defined in §405.5) filed in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, or Connecticut.
(b) If you move from one State to another after your disability claim has been filed, adjudicators at subsequent levels of review will apply the regulations applicable at the time of such subsequent review in the State where you filed the disability claim.

Subparts B–C [Reserved]