

classification or encryption review request conducted by BIS; and,

* * * * *

9. Section 762.4 is amended by adding a sentence at the end of the section to read as follows:

§ 762.4 Original records required.

* * * With respect to documents that BIS issues to a party in SNAP-R, either an electronically stored copy in a format that makes the document readable with software possessed by that party or a paper print out of the complete document is deemed to be an original record for purposes of this paragraph.

Dated: November 30, 2009.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E9-28982 Filed 12-3-09; 8:45 am]

BILLING CODE 3510-33-P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, 416, and 422

[Docket No. SSA-2008-0015]

RIN 0960-AG80

Reestablishing Uniform National Disability Adjudication Provisions

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to eliminate the remaining portions of part 405 of our rules, which we now use for initial disability claims in our Boston region. We propose to use the same rules for disability claims in the Boston region that we use for disability adjudications in the rest of the country, including those rules that apply to the administrative law judge (ALJ) and Appeals Council (AC) levels of our administrative review process in parts 404 and 416 of our rules.

DATES: To be sure that we consider your comments, we must receive them no later than February 2, 2010.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2008-0015 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any

personal information, such as Social Security numbers or medical information.

1. **Internet:** We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the *Search* function to find docket number SSA-2008-0015. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. **Fax:** Fax comments to (410) 966-2830.

3. **Mail:** Mail your comments to the Office of Regulations, Social Security Administration, 137 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT:

Dean Landis, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-0520 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

Background

On March 31, 2006, we published final rules in the **Federal Register** that implemented a number of changes in the process for handling initial disability claims. 71 FR 16424. We referred to those regulations, found primarily in 20 CFR part 405, collectively as the Disability Service Improvement process, or DSI. We intended DSI to improve the way we handle initial disability claims. DSI added rules that implemented a Quick Disability Determination (QDD) process at the initial step of our disability determination process. It also replaced the reconsideration step of the administrative review process with review by a Federal Reviewing Official (FedRO), established a Medical and

Vocational Expert System, commonly known as the Office of Medical and Vocational Expertise (OMVE), and made changes to some of the procedures in our hearings process. DSI also eliminated the final step in our administrative review process for initial disability claims, under which a claimant could request review by the Appeals Council. We replaced the Appeals Council with the Decision Review Board (DRB). The DRB, which is composed of selected ALJs and administrative appeals judges (AAJs), reviews certain decisions made by ALJs before those decisions become final. If the DRB does not review an ALJ's decision, the ALJ's decision becomes our final decision. On August 1, 2006, we implemented the DSI rules in our Boston region, which consists of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. We planned to implement them in our remaining regions over a period of years.

As part of our efforts to improve our administrative review process, we have continually monitored the DSI process and made appropriate changes when necessary. For example, we published final rules on September 6, 2007, that implemented the QDD process nationally. 72 FR 51173. In other final rules, we suspended new claims processing through the Office of the Federal Reviewing Official (OFedRO) and the OMVE as of March 23, 2008, so that we could reallocate those resources to reduce the backlog at the hearing level. 73 FR 2411, corrected at 73 FR 10381. In November 2008, the OFedRO issued a decision on the last of the claims it had accepted for review. Thus, in accordance with our final rules, subpart C of part 405 is no longer in effect, and the States in the Boston region have returned to the process they were following before August 2006, whether that process was reconsideration of an initial determination under §§ 404.907 and 416.1407 or the testing procedures found in §§ 404.906 and 416.1406. 73 FR at 2412.

In addition, on October 29, 2007, we published a notice of proposed rulemaking (NPRM) that would have implemented nationally a number of changes to the hearings and appeals processes. 72 FR 61218. We made those proposals against the backdrop of increasing workloads, lengthening hearing backlogs, and diminishing resources. While we continue to believe that many of the provisions contained in the October 29, 2007, NPRM would have both protected claimants' rights and made the disability process more

efficient, we are reevaluating a number of the provisions in those proposed rules in light of the many comments we received.

In this NPRM, we are proposing to eliminate the DRB and restore in the Boston region the same rules and procedures at the ALJ hearing and Appeals Council levels that we follow in the rest of the country. With the other changes we have already made to the DSI process, we would no longer need the DSI rules in part 405 if these proposed rules become final. These proposed rules would not affect our Prototype and Single Decision Maker demonstration projects, and we will not discuss them in this NPRM.

Explanation of Proposed Changes

Proposed Changes to the Hearings and Appeals Levels of the Administrative Review Process

After adopting QDD nationwide and eliminating the FedRO and OMVE processes, the remaining portions of DSI primarily involve procedures at the ALJ hearing and DRB levels. We propose to eliminate these remaining portions of the DSI process, which we currently use only in the Boston region, and apply the same ALJ and Appeals Council rules in parts 404 and 416 that we use in the rest of the country. We are proposing the ALJ hearing level changes in order to ensure that all hearings use the same process for administrative efficiency.

Under the DSI rules, if you file your initial disability claim in the Boston region, we will use the DSI procedures even if you later move to a State in another region. Conversely, if you file your initial disability claim in a State outside the Boston region, we will continue to use our non-DSI rules, even if you later move to a State within the Boston region. 20 CFR part 405, subpart A, Appendix 1. Currently in DSI cases in which the claimant leaves the Boston region and videoconferencing is not possible, ALJs from the Boston region must travel to the non-DSI regions to hear the cases. This process is inefficient and increases the ALJ workload burden, not just on the ALJs who must travel to hear the DSI cases, but on other ODAR employees who are needed to support the process, and on those claimants whose cases may be delayed. We believe it would be better to return the Boston region to the same hearings process we use in the rest of the country, improving both the consistency and efficiency of the process. We invite public comment on our proposal to apply in the Boston region the same ALJ and Appeals

Council rules that we use in the rest of the country.

We also propose to eliminate the DRB provisions in the DSI process. Under these proposed rules, we would restore a claimant's right to request administrative review of an ALJ's decision in claims in the Boston region. We believe that we could better use our resources by eliminating the DRB.

The DRB's workload has grown quickly and has become overwhelming. Originally, we intended to limit DRB review to cases selected using an automated predictive model that would identify the most error-prone cases. However, we have not been able to implement this model and do not expect to be able to do so in the foreseeable future. Without this tool, the DRB cannot focus on only selected cases, severely limiting its ability to function as we intended and requiring significantly more resources than we had anticipated.

As a result, the DRB's workload has had a disproportionate impact on the resources of the Appeals Council. Before we implemented DSI, requests for review from the Boston region represented a small fraction of the Appeals Council's total requests for review. The increased need for resources devoted to the DRB diverts Appeals Council staff from other key workloads.

As we continue to work down our disability hearings backlog, the number of ALJ adjudications nationwide has increased, leading to both an increased DRB workload in the Boston region and an increased number of requests for review by the Appeals Council in other areas of the country.

The DRB also affects our resources at the hearing level and our ability to reduce the hearing backlog. Those ALJs working full-time on the DRB are unavailable to hold hearings. We will need to assign even more ALJs to the DRB's workload as the number of DRB receipts rises. Consequently, the continued use of the DRB adversely affects our ability to reduce the hearings backlog. We invite public comment on our proposal to remove the DRB provisions from our regulations.

Proposal To Remove Part 405

If we make final the proposed changes to the hearings and appeals levels of our process, we would no longer need part 405 of our rules. The proposed changes to the ALJ hearing and DRB provisions would remove subparts D and E of part 405 and related sections in subpart A. We have already published final rules that either remove other aspects of the DSI process or extend them nationally.

As we stated above, under the final rules we published in March 2008 suspending the FedRO program, subpart C of part 405 is no longer in effect. We have also terminated the OMVE initiative described in the DSI rules. Our rules state that, absent a decision by the Commissioner of Social Security to extend the sunset date, the OMVE provisions would no longer be effective the day after a FedRO issues a decision on the last of the claims accepted for FedRO review. Section 405.10(d).

We propose to remove all remaining DSI rules and use the same rules for adjudication in the Boston region as we use in the rest of the country. Most remaining provisions of the DSI regulations are general provisions that are also addressed in parts 404 and 416 of our rules. These remaining provisions also include definitions of various terms in the DSI program, extension of the deadline to request review of our action, disqualification of disability adjudicators, discrimination complaints, initial determinations, judicial review, reopening and revision of determinations and decisions, expedited appeals in Constitutional claims, and payment of certain travel expenses. We also invite public comment on our proposal to eliminate all remaining DSI provisions.

Conforming Changes

We also propose a number of conforming changes to sections in parts 404, 416, and 422 to reflect this proposed removal of the DSI rules.

Clarity of These Proposed Rules

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists or diagrams?
- What else could we do to make the rules easier to understand?

When Will We Start To Use These Rules?

We will not use these rules until we evaluate the public comments, determine whether to issue them as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the significant public comments. Until the effective date of any final rules, we will continue to use our current rules.

We will apply any final rules based on these proposed rules to all new disability claims in the Boston region. We will also apply the final rules to any disability claims in the Boston region that are pending in our administrative review process on or after the effective date of the final rules, including cases that are pending on remand from the Federal courts.

If we adopt these rules as proposed, we would no longer require the claimant to submit evidence at least 5 business days before the date of the scheduled hearing (or to show good cause if submitted later). On the effective date of these final rules, we will accept evidence consistent with the provisions of parts 404 and 416.

Under the current DSI rules, we notify claimants at least 75 days before the date of the scheduled hearing. If we adopt these rules as proposed, we would hold any previously-scheduled hearings on the date provided in the notice.

On the effective date of the final rules, we plan to transfer any cases pending before the DRB to the Appeals Council. We will treat any decisions referred to the DRB for review as if the claimant had requested Appeals Council review of the hearing decision. For cases in which the claimant requested that the DRB review a dismissal by an ALJ, we will treat the pending request as a request for Appeals Council review of the ALJ's dismissal. We will transfer any cases remanded by a Federal court that had been assigned to the DRB to the Appeals Council.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this proposed rule is subject to OMB review because it meets the criteria for a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

We certify that this proposed rule, if published in final, will not have a significant economic impact on a

substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 405

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Public assistance programs; Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI).

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public Assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure; Organization and functions (Government agencies); Reporting and recordkeeping requirements; Social Security.

Dated: August 28, 2009.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble and under sec. 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5)), we propose to amend subparts J, P, and Q of part 404, remove and reserve part 405, and amend subparts I, J, and N of part 416 and subparts B and C of part 422 of chapter III of title 20 Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart J—[Amended]

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Public Law 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Public Law 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Public Law 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

§ 404.906 [Amended]

2. Amend § 404.906 by removing the fourth sentence of paragraph (b)(4).

§ 404.930 [Amended]

3. Amend § 404.930 by removing paragraph (c).

Subpart P—[Amended]

4. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Public Law 104–193, 110 Stat. 2105, 2189; sec. 202, Public Law 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

5. Amend § 404.1502 by revising the definition of nonexamining source to read as follows:

§ 404.1502 General definitions and terms for this subpart.

* * * * *

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts or psychological experts we consult. See § 404.1527.

* * * * *

6. Amend § 404.1512 by revising paragraph (b)(6) to read as follows:

§ 404.1512 Evidence.

* * * * *

(b) * * *

(6) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or

psychological consultants and other program physicians or psychologists, and opinions based on their review of the evidence in your case record expressed by medical experts that we consult. See §§ 404.1527(f)(2)–(3).

7. Amend § 404.1513 by revising the first sentence of paragraph (c) to read as follows:

§ 404.1513 Medical and other evidence of your impairment(s).

(c) At the administrative law judge and Appeals Council levels, we will consider residual functional capacity assessments made by State agency medical and psychological consultants, and other program physicians and psychologists to be “statements about what you can still do” made by nonexamining physicians and psychologists based on their review of the evidence in the case record.

8. Amend § 404.1519k by revising paragraph (a) to read as follows:

§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.

(a) The rate of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 404.1624 and 404.1626 of this part.

9. Amend § 404.1519m by revising the third sentence to read as follows:

§ 404.1519m Diagnostic tests or procedures.

A State agency medical consultant must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk.

10. Amend § 404.1519s by revising paragraph (c) to read as follows:

§ 404.1519s Authorizing and monitoring the consultative examination.

(c) Consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

11. Amend § 404.1520a by revising the third sentence and removing the fourth sentence of paragraph (d)(2), and revising paragraph (e) to read as follows:

§ 404.1520a Evaluation of mental impairments.

(d) We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process, or in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision).

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. The State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer’s pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) If the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the

case to the State agency or the appropriate Federal component, using the rules in § 404.941, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 404.941(d) or (e). If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

12. Amend § 404.1526 by revising the first sentence of paragraph (d) to read as follows:

§ 404.1526 Medical equivalence.

(d) A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations.

13. Amend § 404.1527 by revising the first sentence of paragraph (f)(1) and removing paragraph (f)(4), to read as follows:

§ 404.1527 Evaluating opinion evidence.

(f) (1) In claims adjudicated by the State agency, a State agency medical or psychological consultant will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to this subpart, and your residual functional capacity.

14. Amend § 404.1529 by revising the third and fifth sentences of paragraph (b) to read as follows:

§ 404.1529 How we evaluate symptoms, including pain.

(b) In cases decided by a State agency (except in disability hearings under §§ 404.914 through 404.918 of this chapter), a State agency medical or psychological consultant, or a medical

or psychological consultant designated by the Commissioner, directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * * At the administrative law judge hearing or Appeals Council level of the administrative review process, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *

15. Amend § 404.1546 by revising paragraph (a) and removing paragraph (d), to read as follows:

§ 404.1546 Responsibility for assessing your residual functional capacity.

(a) * * * When a State agency makes the disability determination, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity.

* * * * *

Subpart Q—[Amended]

16. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

§ 404.1601 [Amended]

17. Amend § 404.1601 by removing the third sentence of the introductory text before paragraph (a).

§ 404.1616 [Amended]

18. Amend § 404.1616 by removing the third sentence of paragraph (b), and removing paragraph (e)(4).

19. Amend § 404.1624 by revising the first sentence to read as follows:

§ 404.1624 Medical and other purchased services.

The State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability.

* * *

PART 405—[REMOVED AND RESERVED]

20. Remove and reserve part 405, consisting of §§ 405.1 through 405.901.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

21. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383(b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Public Law 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

22. Amend § 416.902 by revising the definition of nonexamining source to read as follows:

§ 416.902 General definitions and terms for this subpart.

* * * * *

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts or psychological experts we consult. See § 416.927.

* * * * *

23. Amend § 416.912 by revising paragraph (b)(6) to read as follows:

§ 416.912 Evidence.

* * * * *

(b) * * *

(6) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions based on their review of the evidence in your case record expressed by medical experts that we consult. See §§ 416.927(f)(2)–(3).

* * * * *

24. Amend § 416.913 by revising the first sentence of paragraph (c) to read as follows:

§ 416.913 Medical and other evidence of your impairment(s).

* * * * *

(c) * * * At the administrative law judge and Appeals Council levels, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be

“statements about what you can still do” made by nonexamining physicians and psychologists based on their review of the evidence in the case record.

* * *

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25. Amend § 416.919k by revising paragraph (a) to read as follows:

§ 416.919k Purchase of medical examinations, laboratory tests, and other services.

* * * * *

(a) The rate of payment to be used for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 416.1024 and 416.1026.

* * * * *

26. Amend § 416.919m by revising the third sentence to read as follows:

§ 416.919m Diagnostic tests or procedures.

* * * A State agency medical consultant must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. * * *

27. Amend § 416.919s by revising paragraph (c) to read as follows:

§ 416.919s Authorizing and monitoring the consultative examination.

* * * * *

(c) Consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

* * * * *

28. Amend § 416.920a by revising the third sentence and removing the fourth sentence of paragraph (d)(2) and revising paragraph (e) to read as follows:

§ 416.920a Evaluation of mental impairments.

* * * * *

(d) * * *

(2) * * * We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process, or in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision). * * *

* * * * *

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record

how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), we will document application of the technique in the decision.

(1) At the initial and reconsideration levels, except in cases in which a disability hearing officer makes the reconsideration determination, our medical or psychological consultant has overall responsibility for assessing medical severity. The State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. When a disability hearing officer makes a reconsideration determination, the determination must document application of the technique, incorporating the disability hearing officer's pertinent findings and conclusions based on this technique.

(2) At the administrative law judge hearing and Appeals Council levels, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(3) If the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 416.1441, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 416.1441(d) or (e). If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

29. Amend § 416.924 by revising paragraph (g) to read as follows:

§ 416.924 How we determine disability for children.

* * * * *

(g) * * * When we make an initial or reconsidered determination whether you are disabled under this section or whether your disability continues under § 416.994a (except when a disability hearing officer makes the reconsideration determination), we will complete a standard form, Form SSA-538, Childhood Disability Evaluation Form. The form outlines the steps of the sequential evaluation process for individuals who have not attained age 18. The State agency medical or psychological consultant (see § 416.1016 of this part) or other designee of the Commissioner has overall responsibility for the content of the form and must sign the form to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. Disability hearing officers, administrative law judges, and the administrative appeals judges on the Appeals Council (when the Appeals Council makes a decision) will not complete the form but will indicate their findings at each step of the sequential evaluation process in their determinations or decisions.

30. Amend § 416.926 by revising the first sentence of paragraph (d) and revising paragraph (e) to read as follows:

§ 416.926 Medical equivalence for adults and children.

* * * * *

(d) * * * A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations. * * *

(e) *Responsibility for determining medical equivalence.* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 416.1016 of this part) has the overall responsibility for determining medical equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining medical equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 416.1418, with the Associate Commissioner for Disability

Programs or his or her delegate. For cases at the administrative law judge or Appeals Council level, the responsibility for deciding medical equivalence rests with the administrative law judge or Appeals Council.

31. Amend § 416.926a by revising paragraph (n) to read as follows:

§ 416.926a Functional equivalence for children.

* * * * *

(n) *Responsibility for determining functional equivalence.* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (see § 416.1016 of this part) has the overall responsibility for determining functional equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining functional equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 416.1418, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the administrative law judge or Appeals Council level, the responsibility for deciding functional equivalence rests with the administrative law judge or Appeals Council.

32. Amend § 416.927 by revising the first sentence of paragraph (f)(1) and removing paragraph (f)(4), to read as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant will consider the evidence in your case record and make findings of fact about the medical issues, including, but not limited to, the existence and severity of your impairment(s), the existence and severity of your symptoms, whether your impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to subpart P of part 404 of this chapter, and your residual functional capacity. * * *

* * * * *

33. Amend § 416.929 by revising the third and fifth sentences of paragraph (b) to read as follows:

§ 416.929 How we evaluate symptoms, including pain.

* * * * *
(b) * * * In cases decided by a State agency (except in disability hearings under §§ 416.1414 through 416.1418 of this part), a State agency medical or psychological consultant, or a medical or psychological consultant designated by the Commissioner, directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * * At the administrative law judge hearing or Appeals Council level of the administrative review process, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *
34. Amend § 416.946 by revising paragraph (a) and removing paragraph (d), to read as follows:

§ 416.946 Responsibility for assessing your residual functional capacity.

(a) * * * When a State agency makes the disability determination, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity.
* * * * *

Subpart J—[Amended]

35. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

§ 416.1001 [Amended]

36. Amend § 416.1001 by removing the third sentence of the introductory text before paragraph (a).

§ 416.1016 [Amended]

37. Amend § 416.1016 by removing the third sentence of paragraph (b) and removing paragraph (e)(4).

38. Amend § 416.1024 by revising the first sentence to read as follows:

§ 416.1024 Medical and other purchased services.

The State will determine the rates of payment to be used for purchasing medical or other services necessary to make determinations of disability.
* * *

Subpart N—[Amended]

39. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Public Law 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

§ 416.1406 [Amended]

40. Amend § 416.1406 by removing the fourth sentence of paragraph (b)(4).

§ 416.1430 [Amended]

41. Amend § 416.1430 by removing paragraph (c).

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

42. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13), and sec. 7213(a)(1)(A) of Public Law 108–458.

43. Amend § 422.130 by revising the first sentence of paragraph (b) and the second sentence of paragraph (c) to read as follows:

§ 422.130 Claim procedure.

* * * * *
(b) * * * An individual who files an application for monthly benefits, the establishment of a period of disability, a lump-sum death payment, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, either on his own behalf or on behalf of another, must establish by satisfactory evidence the material allegations in his application, except as to earnings shown in the Social Security Administration’s records (see subpart H of part 404 of this chapter for evidence requirements in nondisability cases and subpart P of part 404 of this chapter for evidence requirements in disability cases). * * *

(c) * * * Section 404.1503 of this chapter has a discussion of the respective roles of State agencies and the Administration in the making of disability determinations and information regarding initial determinations as to entitlement or termination of entitlement in disability claims. * * *

44. Revise § 422.140 to read as follows:

§ 422.140 Reconsideration of initial determination.

If you are dissatisfied with an initial determination with respect to entitlement to monthly benefits, a lump-sum death payment, a period of disability, a revision of an earnings record, with respect to any other right

under title II of the Social Security Act, or with respect to entitlement to hospital insurance benefits or supplementary medical insurance benefits, you may request that we reconsider the initial determination. The information in § 404.1503 of this chapter as to the respective roles of State agencies and the Social Security Administration in making disability determinations is also generally applicable to the reconsideration of initial determinations involving disability. However, in cases in which a disability hearing as described in §§ 404.914 through 404.918 and § 416.1414 through 416.1418 of this chapter is available, the reconsidered determination may be issued by a disability hearing officer or the Associate Commissioner for Disability Programs or his or her delegate. After the initial determination has been reconsidered, we will mail you written notice and inform you of your right to a hearing before an administrative law judge (see § 422.201).

Subpart C—[Amended]

45. Revise the heading of subpart C of part 422 to read as follows:

Subpart C—Procedures of the Office of Disability Adjudication and Review.

46. The authority citation for subpart C of part 422 continues to read as follows:

Authority: Secs. 205, 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 421, and 902(a)(5)); 30 U.S.C. 923(b).

47. Amend § 422.201 by revising the first sentence and removing the third sentence of the introductory text before paragraph (a) to read as follows:

§ 422.201 Material included in this subpart.

This subpart describes in general the procedures relating to hearings before an administrative law judge of the Office of Disability Adjudication and Review, review by the Appeals Council of the hearing decision or dismissal, and court review in cases decided under the procedures in parts 404, 408, 410, and 416 of this chapter. * * *

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