

**SOCIAL SECURITY ADMINISTRATION**

[Docket No. SSA-2015-0037; Social Security Ruling, SSR 16-1p]

**Titles II and XVI: Fraud and Similar Fault Redeterminations Under Sections 205(U) and 1631(E)(7) of the Social Security Act**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of Social Security Ruling (SSR).

**SUMMARY:** In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of SSR 16-1p. This Ruling provides guidance on how we redetermine entitlement to and eligibility for benefits when there is a reason to believe fraud or similar fault is involved with an individual's application for benefits.

**DATES:** *Effective Date:* March 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dan O'Brien, Director of Office of Vocational Evaluation and Process Policy in the Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 597-1632 or TTY 410-966-5609, 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:** Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we convey to the public SSA precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all components of the Social Security Administration. 20 CFR 402.35(b)(1).

This SSR will remain in effect until we publish a notice in the **Federal Register** that rescinds it, or we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social

Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Dated: March 7, 2016.

**Carolyn W. Colvin,**

*Acting Commissioner of Social Security.*

**Policy Interpretation Ruling**

*Social Security Ruling, SSR 16-1p:*

**Titles II And XVI: Fraud and Similar Fault Redeterminations Under Sections 205(u) And 1631(e)(7) of the Social Security Act**

**PURPOSE:** This Social Security Ruling (SSR) explains the process we use to redetermine an individual's entitlement to or eligibility for benefits when there is reason to believe that fraud or similar fault was involved in that individual's application for benefits.<sup>1</sup>

**CITATIONS:** Sections 205(u) and 1631(e)(7) of the Social Security Act, 42 U.S.C. 405(u), 1383(e)(7), as amended; Regulations No. 4, sections 404.704, 404.708, 404.1512, 404.1520, and 404.1527; Regulations No. 16, sections 416.912, 416.920, 416.924, and 416.927; and Regulations No. 22, section 422.130(b).

**INTRODUCTION:** The Social Security Independence and Program Improvements Act of 1994, Public Law 103-296, amended the Social Security Act (Act) to add provisions addressing fraud or similar fault. These amendments to sections 205 and 1631 of the Act provide that we must immediately redetermine an individual's entitlement to monthly insurance benefits under title II or eligibility for benefits under title XVI if there is reason to believe that fraud or similar fault was involved in the individual's application for such benefits. This legislation requires us to redetermine an individual's entitlement or eligibility unless a United States Attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by SSA with regard to beneficiaries or recipients in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud. This statute further provides that, when we redetermine entitlement or eligibility, or when we make an initial determination of entitlement or eligibility, we "shall

disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence." If, after redetermining entitlement to or eligibility for benefits, we determine that without the disregarded evidence, the evidence does not support entitlement or eligibility, we may terminate such entitlement or eligibility and may treat benefits paid based on such evidence as overpayments.

This ruling describes the process we use when we redetermine an individual's entitlement or eligibility to receive benefits when there is reason to believe that fraud or similar fault was involved in that individual's application for benefits.

This ruling applies to all final determinations or decisions on entitlement or eligibility to receive benefits under title II and title XVI of the Act.

This ruling does not replace or limit other appropriate standards and criteria for evaluation of claims.

**POLICY INTERPRETATION:**

**A. General**

1. Sections 205(u) and 1631(e)(7) of the Act provide that we must immediately redetermine an individual's entitlement to monthly insurance benefits under title II or eligibility for benefits under title XVI if there is reason to believe that fraud or similar fault was involved in the individual's application for benefits.

2. This legislation requires us to redetermine an individual's entitlement or eligibility unless a United States Attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that our action with regard to beneficiaries or recipients in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

3. When we redetermine a case under sections 205(u) or 1631(e)(7) of the Act, we must disregard evidence if there is reason to believe that fraud or similar fault was involved in providing that evidence.

4. We may find that any individual or entity whose actions affect an individual's application for monthly benefits, has committed fraud or similar fault. Examples of any individual or entity include a claimant, beneficiary, auxiliary, recipient, spouse, representative, medical source, translator, interpreter, and representative payee. Sections 205(u) or 1631(e)(7) of the Act do not require that the individual or entity who committed

<sup>1</sup> Fraud and similar fault redeterminations under sections 205(u) and 1631(e)(7) of the Act are distinct from reopenings as described in 20 CFR 404.987-404.996 and 20 CFR 416.1487-416.1494. Fraud and similar fault redeterminations are also distinct from redeterminations of Supplemental Security Income eligibility under Title XVI of the Act as described in 20 CFR 416.204.

fraud or similar fault, or the individual or entity providing the evidence that involves fraud or similar fault, have a direct relationship to or act on behalf of the claimant, beneficiary, or recipient, or directly or indirectly benefit from the fraud or similar fault.

5. During the redetermination, we will consider evidence that was provided absent fraud or similar fault, and that relates to the individual's entitlement and eligibility from the time of the individual's original allowance, even if that evidence was not presented previously.

6. If, after redetermining an individual's entitlement to monthly insurance benefits under title II or eligibility for benefits under title XVI, we determine that the evidence does not support such entitlement or eligibility, we may terminate such entitlement or eligibility and may treat benefits paid or payments made based on such evidence as overpayments.

7. If an individual disagrees with our finding that the evidence does not support his or her entitlement or eligibility at the time of the original allowance, that individual may appeal our determination or decision.

8. If the individual believes he or she is currently disabled, he or she may file a new application while appealing our determination or decision.

9. If we assess an overpayment, we will apply the provisions of 20 CFR part 404, subpart F (20 CFR 404.501 *et seq.*), 20 CFR part 416, subpart E (20 CFR 416.501 *et seq.*). The individual assessed with the overpayment may request that we waive that overpayment, and we will consider such a request under our rules.

10. We will not waive an assessed overpayment if we find that the individual is at fault in causing the overpayment. In determining whether an individual is at fault, we will consider all pertinent circumstances, including the individual's age and intelligence, and any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has.

## B. Definitions

1. *Fraud.* Fraud exists when a person, with the intent to defraud, either makes or causes to be made, a false statement or misrepresentation of a material fact for use in determining rights under the Social Security Act; or conceals or fails to disclose a material fact for use in determining rights under the Social Security Act.

2. *Similar Fault.* As defined in sections 205(u)(2) and 1631(e)(7)(B) of the Act, similar fault is involved with

respect to a determination if: "(A) an incorrect or incomplete statement that is material to the determination is knowingly made; or (B) information that is material to the determination is knowingly concealed."

3. *Material.* This term describes a statement or information, or an omission from a statement or information, that could influence us in determining entitlement to benefits under title II or eligibility for benefits under title XVI of the Act.

4. *Knowingly.* This term describes a person's awareness or understanding regarding the correctness or completeness of the information he or she provides us, or the materiality of the information he or she conceals from us.

5. *Preponderance of Evidence.* This term means such relevant evidence that as a whole shows that the existence of a fact to be proven is more likely than not. Preponderance is established by that piece or body of evidence that, when considered, produces the stronger impression and is more convincing as to its truth when weighed against the evidence in opposition. Thus, preponderance does not require that a certain number of pieces of evidence (e.g., five or six) must be present. It is possible that just one piece of evidence may be so convincing that it outweighs more than one piece of evidence in opposition.

## C. How We Redetermine an Individual's Entitlement or Eligibility Under Sections 205(u) and 1631(e)(7) of the Act

The following steps outline how we redetermine entitlement or eligibility in this SSR.

1. Under sections 205(u) or 1631(e)(7) of the Act, we must immediately redetermine an individual's entitlement to or eligibility for benefits when there is reason to believe that fraud or similar fault was involved in an individual's application for benefits.

2. We will disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.

a. We will disregard any evidence supplied, prepared, or signed by a source when there is a reason to believe that the source provided the evidence knowing it was incorrect or incomplete or concealed information knowing it was material to the determination, even if it includes a report prepared or signed by another source, such as lab findings and x-rays.

b. We will not develop evidence from a source when there is a reason to believe that the source provided

evidence knowing it was fraudulent, incorrect, or incomplete.

c. In certain circumstances, we may disregard evidence provided by someone who has not committed fraud or similar fault, but whose evidence relies on other evidence involving fraud or similar fault. For example, we may disregard parts of a physician's report that rely on another source's evidence that we disregarded. Depending on the extent to which the physician relied on the disregarded evidence, we may disregard the physician's entire report.

d. We may consider evidence we relied on to find fraud or similar fault in one claim in deciding whether there is fraud or similar fault in another claim. We may also consider that evidence in deciding the weight we give to evidence in another claim.

e. If we cannot determine whether evidence provided by a source involved fraud or similar fault, we will consider the evidence in accordance with our policies regarding evaluating symptoms and weighing medical source opinions. We will also consider its consistency with the remaining evidence.

f. We will document the claim file with a description of the disregarded evidence and the reasons for disregarding the evidence.

3. We will consider the claim only through the date of the final determination or decision on the beneficiary's application for benefits (*i.e.*, the original date of the allowance). We will not develop evidence about new medical conditions or impairments with an onset date after the original date of the allowance. We will not develop information about the recipient's or beneficiary's current state of health.

4. We will accept evidence relevant to the issues we decide during a redetermination. For instance, we will accept evidence that relates to the issue of whether the individual was disabled as defined under the Act at the time of the individual's original allowance.

5. We will consider evidence that postdates the original date of the allowance if that evidence relates to the period at issue.

6. A finding of fraud or similar fault and disregarding evidence based on that finding does not constitute complete adjudicative action on a claim. We will evaluate the remaining evidence in file and determine whether that evidence supports a finding of entitlement to or eligibility for benefits.

## D. Appeal Rights

1. Initiating a redetermination under sections 205(u) or 1631(e)(7) of the Act is not subject to administrative or judicial review.

2. After a redetermination, an individual may appeal our determination that after disregarding evidence, the remaining evidence does not support that individual's entitlement to or eligibility for benefits and results in termination of such entitlement or eligibility. The individual may appeal any overpayments we assess based on such evidence.

3. An individual may appeal our finding of fraud or similar fault. However, we will not administratively review information provided by SSA's Office of the Inspector General under section 1129(l) of the Act regarding its reason to believe that fraud was involved in the individual's application for benefits.

**DATES:** Effective Date: This SSR is effective on March 14, 2016.

**CROSS-REFERENCES:** SSR 85-23, "Title XVI: Reopening Supplemental Security Income Determinations at Any Time for 'Similar Fault.'" SSR 16-2p, "Titles II and XVI: Evaluation of Claims Involving the Issue of 'Similar Fault' in the Providing of Evidence."

[FR Doc. 2016-05661 Filed 3-11-16; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2015-0070]

### Social Security Acquiescence Ruling (AR) 16-1(7), *Boley v. Colvin*: Judicial Review of an Administrative Law Judge's Order Finding No Good Cause for a Late Hearing Request and Dismissing the Request as Untimely—Titles II and XVI of the Social Security Act

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Acquiescence Ruling (AR).

**SUMMARY:** We are publishing this Social Security AR to explain how we will apply a holding in a decision of the United States Court of Appeals for the Seventh Circuit that we have determined conflicts with our interpretation of the law regarding judicial review of an administrative law judge's (ALJ's) order finding no good cause for a late hearing request and dismissing the request as untimely.

**DATES:** *Effective:* March 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Todd Lewellen, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-3309, or TTY 410-966-5609, 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:** We are publishing this Social Security AR in accordance with 20 CFR 402.35(b)(2), 404.985(a), (b), and 416.1485(a), (b) to explain how we will apply a holding in *Boley v. Colvin*, 761 F.3d 803 (7th Cir. 2014), regarding judicial review of an ALJ's order finding no good cause for a late hearing request and dismissing the request as untimely.

An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

This AR explains how we will apply the holding in *Boley v. Colvin* to claims in which the claimant makes a late request for an ALJ hearing, the ALJ dismisses the hearing request and finds that the claimant lacked good cause for missing the appeal deadline, and then the claimant timely seeks review of the ALJ's dismissal by the Appeals Council (AC). We will apply this AR to all claims in the Seventh Circuit in which the AC denied a request for review of such a dismissal on or after March 14, 2016. If the AC denied a request for review of an ALJ dismissal between August 4, 2014 (the date of the Court of Appeals' decision) and March 14, 2016 (the effective date of this AR), the claimant may request that we apply the AR.

When we received this precedential Court of Appeals' decision and determined that an AR might be required, we began to identify those claims that were pending before the agency that might be subject to readjudication if we subsequently issued an AR. Because we have determined that an AR is required and are publishing this AR, we will send a notice to those individuals whose claims we have identified. In the notice, we will provide information about the AR and the claimant's rights under the AR. However, claimants may request that we apply this AR to their claims even if they did not receive a notice, as provided in 20 CFR 404.985(b)(2) and 416.1485(b)(2).

If we later rescind this AR as obsolete, we will publish a notice in the **Federal Register** to that effect, as provided in 20 CFR 404.985(e) and 416.1485(e). If we decide to relitigate the issue covered by

this AR, as provided by 20 CFR 404.985(c) and 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(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)

Dated: March 3, 2016.

**Carolyn W. Colvin,**

*Acting Commissioner of Social Security.*

### ACQUIESCENCE RULING 16-1(7)

*Boley v. Colvin*, 761 F.3d 803 (7th Cir. 2014): *Judicial Review of an Administrative Law Judge's Order Finding No Good Cause for a Late Hearing Request and Dismissing the Request as Untimely—Titles II and XVI of the Social Security Act.*

**ISSUE:** May a claimant obtain judicial review of an administrative law judge (ALJ)'s order finding no good cause for a late hearing request and dismissing the request as untimely?

**STATUTE/REGULATION/RULING CITATION:** Sections 205(g) and 1631(c)(3) of the Social Security Act (42 U.S.C. 405(g), 1383(c)(3)); 20 CFR 404.900(a), 404.901, 404.903(j), 404.933(b)–(c), 404.955, 404.957, 404.959, 416.1400(a), 416.1401, 416.1403(a)(8), 416.1433(b)–(c), 416.1455, 416.1457, 416.1459.

**CIRCUIT:** Seventh (Illinois, Indiana, Wisconsin).

**APPLICABILITY OF RULING:** This ruling applies to claims in which a claimant resides in a State within the Seventh Circuit and in which an ALJ entered an order finding no good cause for a late hearing request, the ALJ dismissed the request as untimely, the claimant requested review by the Appeals Council (AC), and the AC denied review.

**DESCRIPTION OF CASE:** Marilyn Boley filed a claim for disability insurance benefits. We denied her claim at the initial and reconsideration levels of administrative review. Although she was represented by an attorney at the time we denied her request for reconsideration, we sent notice of the reconsidered determination to Ms. Boley, but not to her attorney. After learning that we had denied Ms. Boley's request for reconsideration, the attorney requested a hearing. An ALJ dismissed that request as untimely because the regulations at 20 CFR 404.933(b) and 416.1433(b) require a claimant to request a hearing within 60 days of the claimant's receipt of a reconsidered