(d), respectively, and a new paragraph (b) is added to read as follows:

§ 575.307 Reduction or termination of retention allowance.

* * * * *

(b) An agency must terminate a retention allowance paid to an employee (or group of employees) under § 575.304(b)(3) (for work on a project critical to the mission of the agency) not later than 1 year after the initial allowance payment. On a case-by-case basis, the head of an agency may ask OPM to extend this time limit.

* * * * *

[FR Doc. 01–1486 Filed 1–18–01; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 416, and 422

[Regulations Nos. 4 and 16]

RIN 0960–AF44

New Disability Claims Process

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to revise our regulations that pertain to the processing of initial claims for disability benefits under title II (Social Security Disability Insurance) and title XVI (Supplemental Security Income) of the Social Security Act (the Act). The proposed rules would incorporate modifications to our administrative review process and disability determination procedures based on testing that we are conducting. The changes, which would apply to initial applications for disability benefits, would:

- First, permit disability examiners in our State agencies the flexibility to decide whether input from a medical or psychological consultant is needed to make a disability determination, so that our State agencies may use the expertise of the disability examiners and medical and psychological consultants more effectively;
- Second, provide claimants with an opportunity for an informal disability conference with the adjudicators of their claims at the initial level in cases in which it appears that the evidence does not support a fully favorable determination; and
- Third, eliminate the reconsideration step of the administrative review process.

We plan to phase in these changes over a period of 1 year until they apply in every State.

DATES: To be sure that your comments are considered, we must receive them no later than March 20, 2001.

ADDRESSES: Comments should be submitted to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703; sent by telefax to (410) 966–2830; sent by e-mail to *regulations@ssa.gov;* or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8:00 a.m. and 4:30 p.m. on regular business days. During these same hours, you may inspect the comments that we receive by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Office of Process and Innovation Management, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3632 or TTY (410) 966–5609, for information about this notice. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet web site, Social Security Online, at www.ssa.gov.

SUPPLEMENTARY INFORMATION:

In Brief, What Are We Proposing To Do?

We are proposing to change our rules in three ways:

1. We are proposing to change our rules for how State agencies make disability determinations for us. The change would allow State agency adjudicators, called ''disability examiners,'' to decide whether input from a medical or psychological consultant is needed to make a disability determination. The medical or psychological consultant would not be responsible for the determination; *i.e.,* would not be an adjudicator of the claim.
2. We are proposing to add rules providing that disability examiners will offer claimants an opportunity for an informal conference whenever it appears that the evidence does not support a fully favorable determination.
3. We are proposing to eliminate the reconsideration step of our administrative review process.

On August 30, 1999, we published a notice in the **Federal Register** announcing a ''prototype'' involving these three major modifications to our disability determination process for initial applications under titles II and XVI of the Act. (See 64 FR 47218.) In the notice, we stated that, before proceeding to national implementation, we expected that the prototype would provide a body of information about the impact of these modifications on agency operations, notice and other procedures, and the quality and timeliness of our determinations and decisions. Although the prototype is continuing and we continue to gather information and gain operational experience, we believe that we now have sufficient information to propose changes to our regulations. Public comments received on these proposed changes will assist us in fine-tuning these changes.

Because we now know that implementation of the process in each State agency requires support during the period of transition, we are considering a plan by which we would implement the process in groups of State agencies until all States use the new process. Our projected completion date will be in 2003. We explain our current plan in more detail later in this preamble, and invite public comment.

What Is the Current Process?

Sections 404.1503 and 416.903 of our regulations provide that State agencies make disability and blindness determinations, following rules that we provide. Sections 404.1615(c) and 416.1015(c) of our regulations provide with respect to initial disability claims that, in most cases, these disability determinations must be made by a State agency medical or psychological consultant and a State agency disability examiner, a lay adjudicator with expertise in evaluating disability. The medical or psychological consultant and the disability examiner work together as a team and are jointly responsible for the determination. Under current rules, a disability examiner alone may make a determination only in the very unusual circumstance in which:

- There is no medical evidence to be evaluated (*i.e.,* no medical evidence exists or we are unable, despite making every reasonable effort, to obtain any medical evidence that may exist); and
- The individual fails or refuses, without good reason, to attend a consultative examination.

State agency determinations in initial claims are generally based on review of the written information in a claimant's case record. Although our procedures permit disability examiners and medical and psychological consultants to speak to claimants to obtain more information, there are no formal requirements for such contact. Also, we have no procedures requiring a State agency adjudicator to explain and discuss our disability standards with claimants or to

explain the determination, apart from the information that we provide in the written notice of determination; *i.e.,* after we have already made the determination.

Sections 205(b)(1) and 1631(c)(1)(A) of the Act provide that an individual who disagrees with our initial determination has a right to a hearing. However, §§ 404.900 and 404.907 (for title II) and 416.1400 and 416.1407 (for title XVI) of our regulations have long provided that, when an individual is dissatisfied with an initial determination, he or she may appeal the determination first to the ''reconsideration'' level of our administrative review process. In initial disability claims, the reconsideration determination consists of a case review of evidence from the initial claim as well as evidence obtained subsequently. Only after the reconsideration determination may individuals who are dissatisfied with their determinations appeal to a hearing before an administrative law judge.

What Led Us to These Proposed Rules?

For many years, we have been exploring methods for improving the disability determination process to make it more consistent, accurate, efficient, and timely. For example, for several years we have engaged in what we call ''process unification'' activities aimed at improving our ability to achieve similar results in similar cases at all stages of the administrative review process. In 1995, we also published § § 404.906 and 416.1406, ''Testing modifications to the disability determination procedures,'' which permitted us to test a number of variations to our current processes. We called the various test processes ''models.'' (See 60 FR 20023, April 24, 1995.)

Among the models that we included in § § 404.906 and 416.1406 were revisions to our current process that would permit a disability examiner in the State agency to assume sole authority for making disability determinations in certain cases, thereby giving examiners the flexibility to decide whether to obtain input from a medical or psychological consultant when making the disability determination. One of the models also included a ''predecision interview'' with the claimant to ensure that the case record was complete and that the claimant understood our disability standards. In the preamble to the Notice of Proposed Rulemaking (NPRM) for these rules, we indicated that in recent years we had conducted various studies on how to improve the disability determination process, and that we had a number of goals in proposing the models. We stated that our goals were:

- To provide assistance to the disability applicant by making the filing of a disability claim simpler;
- To promote fairness in each disability determination by ensuring that each disability applicant is given an opportunity to provide all of the necessary information to complete the claim and is aware of his or her rights under the program; and
- To ensure that our determination is equitable. (See 58 FR 54532, 54533, October 22, 1993.)

In 1994, we included a number of similar features in our proposal to redesign the disability claims process and the subsequent final redesign plan. (See 59 FR 18188, April 15, 1994, and 59 FR 47887, September 19, 1994.) Both the redesign proposal and the final plan were especially critical of:

- The time it takes for us to adjudicate some disability claims,
- The number of SSA and State agency employees who may be involved in processing a claim initially and throughout the appeals process,
- The lack of interaction between the claimant and the decisionmaker, and
- The lack of thorough explanations, in many cases, of the basis for the disability determinations.

Therefore, the redesign of the disability process included the following goals that are important to this NPRM:

- To ensure that claims that should be allowed are allowed at the earliest point in the process;
- To provide more opportunity for claimant interaction with the decisionmaker; and
- To reduce the amount of time required processing a claim to a final disability determination or decision.

Over the years since 1994, we have tested various ideas for addressing these goals and improving the claims process. For example, in 1997, we integrated several of the redesign proposals into what we called the ''Full Process Model.'' We tested this model in eight States and got especially positive results from several features of the model:

- We allowed disability examiners the flexibility to decide whether to obtain medical or psychological consultant input in making a disability determination. (This did not apply to certain cases, described below, in which the Act requires a medical or psychological consultant or other health care professional to participate in making the determination.) This process change revised the role of the medical and psychological consultants to act as true consultants in these cases, to be used as needed.
- We provided claimants with an opportunity for a conference with the disability examiners who were deciding their claims when it appeared that the evidence was not sufficient to support a fully favorable determination. This gave claimants an opportunity to provide additional explanations and evidence, or sources of evidence. The disability examiners also explained the Social Security definition of disability and why it appeared that the claimants did not meet that definition or why it did not appear that the evidence supported a fully favorable determination.
- Finally, we eliminated the reconsideration step of the administrative review process. Claimants who were dissatisfied with their initial determinations appealed directly to the administrative law judge hearing level.

We found that these actions resulted in better determinations at the initial level, with more allowances of claims that should have been allowed. We believe that many claims that would have been allowed only after appeal under the old process were allowed at the initial step under the new process. These claimants were able to receive benefits months sooner than they otherwise would have, an important protection for individuals who are unable to work. By eliminating the reconsideration step, claimants who appealed reached the hearing level an average of 2 months sooner than claimants who went through the reconsideration step and therefore had an opportunity to receive their hearing decisions sooner. Also, the quality of our determinations improved. Reviews of disability determinations from the FPM by SSA's Office of Quality Assessment indicated that the new process improved the accuracy of initial decisions to deny claims from 92.6 percent to 94.8 percent. If implemented nationally, this would translate to approximately 34,000 fewer disabled claimants being erroneously denied benefits and facing the prospect of a lengthy appeal.

We believe that these positive results were due to a number of factors. For example, we know that removing the reconsideration step permitted the State agencies to redirect their resources so that the individuals who formerly worked on reconsideration claims could work on initial claims. This permitted increased contact with the claimants and improved documentation of the disability determinations.

The success of the Full Process Model provided the impetus for our current

prototype, which includes the three most successful elements of the Full Process Model, the elements we are proposing in this Notice of Proposed Rulemaking (NPRM). We have been operating the prototype in 10 States since October 1999. The States are: Alabama, Alaska, California, Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania. In New York at this time, the prototype applies only to residents in areas served by the Albany and Brooklyn branches of the State agency. In California, it applies only to residents in areas served by the Los Angeles North and Los Angeles West branches of the State agency.

This notice pertains to features that have been used in these Prototype States. We continue testing other features that were part of the 1995 proposal separately from the prototype process, but this notice does not pertain to those features.

What Are the Key Features of the Proposed Rules?

The process we are proposing in this NPRM is similar to the prototype process with some modifications based on our experience with the Full Process Model and in the prototype States. The following are the key features and our reasons for proposing them. We explain the specific changes in the proposed rules in detail later in this preamble.

1. Enhanced Roles of State Agency Disability Examiners and Medical and Psychological Consultants

By ''enhanced roles'' of these individuals, we mean that disability examiners would be responsible for making the disability determination in many claims, and may decide whether medical consultant or psychological consultant input is needed. We also mean that medical or psychological consultants will serve as true consultants in these claims by providing review and advice in cases with difficult or complex medical issues. Medical and psychological consultants would be expected to participate in training and mentoring the disability examiners. This change would let us better use the expertise of our adjudicators and medical resources, minimize file handoffs and allow State agencies to make disability determinations in a more timely and cost-effective manner.

However, the proposed rules provide two situations in which a medical or psychological consultant must be involved in assessing disability because of requirements in the Act:

- Sections 221(h) and 1614(a)(3)(H) of the Act, and §§ 404.1503(e), 404.1615(d), 416.903(e), and 416.1015(e) of our regulations require that, before we may find an individual ''not disabled'' in any case in which there is evidence of a mental impairment, we will make every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. Therefore, the proposed rules provide that a disability examiner alone may make a fully favorable determination, but that any determination that is less than fully favorable must be made by a team that includes a medical or psychological consultant, as under current procedures. However, in these cases, the disability examiner will still offer a claimant conference, and the first stage of appeal will be to the administrative law judge hearing level.
- Section 1614(a)(3)(I) of the Act and §§ 416.903(f) and 416.1015(e) of our regulations require that, for all claims for childhood disability benefits under title XVI, we will make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the child's impairment(s) evaluates the case of the child. Therefore, the proposed rules provide that we must use disability examiners and medical or psychological consultants as a team in all determinations of childhood disability under title XVI, including fully favorable determinations. However, the disability examiner will still offer a claimant conference, and appeal will be to the administrative law judge hearing level.

We also provide that, in addition to these two mandatory situations in which a determination is made by a disability examiner and medical or psychological consultant team, State agencies may require medical or psychological consultant involvement in other cases. For example, we would expect a State agency to require its trainees and other less experienced disability examiners to work in teams with medical and psychological consultants until they have become sufficiently expert to determine cases alone.

- We are proposing this change because our experience in the prototype States continues to affirm the successes we had in the Full Process Model. We believe that enhancing the roles of disability examiners and medical and psychological consultants will maximize the effectiveness of adjudicative resources, focusing State agency medical and psychological consultants on duties and responsibilities commensurate with their training and experience. Furthermore, evidence from the Full Process Model as well as the prototype States shows that the accuracy of initial determinations improves, reducing the likelihood that a disabled claimant will have to go through the appeals process in order to receive benefits for which he or she is eligible.

2. Increased Contact Between Claimants and Adjudicators

The proposed rules would require disability examiners to provide claimants with an opportunity for an ''informal disability conference'' in any claim in which the evidence does not appear to support a fully favorable determination. By ''fully favorable'' we mean a determination that the claimant is (1) disabled and (2) that the determination matches the claimant's allegations about onset of disability and (3) that the claimant is still disabled at the time of the determination.

The purpose of the conference would be to:

- Explain our disability requirements to the claimant;
- Explain why the facts currently in the case record indicate that the determination should be less than fully favorable; and
- Ensure that we have identified and made every reasonable effort to obtain relevant evidence from all appropriate sources.

The proposed rules do not prohibit a disability examiner from contacting a claimant at other times. For example, a disability examiner may contact a claimant before he or she requests any evidence to ensure that the information in the case file about the claimant's medical sources is complete. However, under the proposed rules, the disability examiner must still make contact with the claimant at or near the end of the process, when the disability examiner believes that he or she has obtained sufficient evidence on which to base a determination and it appears that the determination will be less than fully favorable.

Our experience in the Full Process Model and the prototype States has shown that increased interaction between claimants and disability examiners makes the process more personal, and it changes the determinations in some claims because of new information provided by claimants during their conferences.

3. Eliminate the Reconsideration Step of the Administrative Review Process for Initial Disability Claims

We are proposing to remove the reconsideration step of our administrative review process in all determinations on initial disability applications except appeals of determinations based on a finding that the claimant is engaging in, or has engaged in, substantial gainful activity. Findings about substantial gainful activity are made in our field offices, not in the State agencies, and the appropriate appeal will continue to be to the reconsideration level.

We are proposing this change primarily because evidence indicates that the reconsideration step adds little value to the disability determination process, at a great cost of staffing resources and processing time. Eliminating the reconsideration step permits State agencies to use their resources to make better determinations at the initial level, thereby increasing the accuracy of initial determinations. It will also provide an opportunity for denied claimants to request a hearing sooner than under the current process and, therefore, result in earlier administrative law judge decisions in many claims.

How Do We Plan To Implement the New Disability Claims Process?

We have determined that it is not feasible to change over to the new process in all of our State agencies all at once. As we have already noted, it is clear from both the Full Process Model and the Prototype that each State will need substantial lead time for training and preparation, and we must retain our capacity to process new claims as timely as possible during implementation.

We believe that our only option for accomplishing this goal is to implement the redesigned process in smaller groups of States in several stages over approximately a 1-year period beginning with the publication of the final rules that result from this NPRM. This will permit us to plan and conduct critical activities in each group of States, such as training, systems enhancement, staffing, and workload management. Most importantly, a staged implementation will also allow us to minimize delays in processing claims. Our goal is to ensure to the extent possible that, while we implement the new process, we continue to make all of our disability determinations timely.

Therefore, the proposed rules explain that only individuals whose cases are adjudicated by State agencies that have implemented the new process will be subject to the new rules. In the proposed revisions, we have described which cases are subject to the new rules and which will continue to be adjudicated under the current rules.

To make clear which cases will be handled using the new rules, we are proposing to include a new temporary appendix 1 to subpart J of part 404 that lists participating State agencies and the criteria for identifying which cases will be handled under the proposed rules. We are printing the appendix only in part 404 to save space; the proposed rules in part 416 cross-refer to the appendix in part 404. As we add more State agencies, we will publish an appropriate notice in the **Federal Register** changing the appendix to include them.

When all State agencies are using the new rules, we will publish rules removing the appendix and all language in the proposed rules that indicates that there are two processes.

What Are the Specific Provisions of the Proposed Rules?

The following are the major revisions of the proposed rules:

Proposed §§ 404.904 and 416.1404 Informal Disability Conference

We are proposing to redesignate current §§ 404.904 and 416.1404, ''Notice of the initial determination,'' as §§ 404.904a and 416.1404a so that we can insert these new provisions. Proposed §§ 404.904 and 416.1404 would provide our rules explaining:

- Who will be offered an informal disability conference;
- What a disability conference is; and
- The procedures associated with the informal disability conference.

Paragraph (a), ''What is an informal disability conference?'' explains that we will offer a claimant an informal disability conference in a case of an initial application for benefits if the individual meets all of the following factors:

1. Based on the evidence in the individual's case record, it appears that we will not be able to make a ''fully favorable'' determination, except if the determination will be based on a finding that the individual is, or was, engaging in substantial gainful activity. We provide an explanation of what we mean by a ''fully favorable'' determination and to specify what is ''not fully favorable'' for purposes of this section. We adopted the language for the definition of a ''fully favorable'' determination from §§ 404.948(a) and 416.1448(a).

2. The individual's case is being determined according to the identifying criteria listed in proposed appendix 1 to subpart J of part 404. These criteria involve people who have filed applications for benefits based on disability and whose claims are handled by one of the State agencies that is using the new rules. As already noted, we intend this proposed provision to be temporary. When all State agencies are participating in the new process, we will delete appendix 1 to subpart J.

Other paragraphs in these proposed sections provide more information about the procedures we would require in connection with the informal disability conference.

- In paragraph (b)—''How will I be contacted?''—we explain how we will notify the individual of the date, time, and place or method (*e.g.,* telephone) of the informal disability conference. We also explain that we will notify the claimant's representative when he or she is represented.

In paragraph (c)—''Where will my informal disability conference be held?—we explain that we may hold the conference by telephone, in person, or using videoconferencing technology but that in most cases we will hold the conference by telephone. We also explain that we will decide the method we will use for the conference.

- In paragraph (d)—''Can an attorney or other representative participate in the informal disability conference?''—we indicate that the individual has the right to have an attorney or other representative present at the informal disability conference.

Sections 404.908 and 416.1408 Parties to a Reconsideration

We propose to revise the first sentence of paragraph (a), ''Who may request a reconsideration,'' to add an exception to the statement that the first level of appeal from an initial determination is a reconsideration. The proposed language includes cross-references to the new appendix and to § 404.930.

Sections 404.930 and 416.1430 Availability of a Hearing Before an Administrative Law Judge

We propose to add a new subparagraph (a)(2) to explain that individuals who meet the criteria in the new appendix appeal their initial determinations to the administrative law judge hearing level. Because of this, we would redesignate the numbers of the other subparagraphs within these paragraphs.

Sections 404.948 and 416.1448 Deciding a Case Without an Oral Hearing Before an Administrative Law Judge

We propose to revise the heading of paragraph (a) from ''Decision wholly favorable'' to ''Decision fully favorable.'' This will make the heading consistent with the text of current §§ 404.948(c) and 404.1448(c) and these proposed rules. The change is only editorial.

Proposed Appendix 1 to Subpart J of Part 404

As we explained earlier in this preamble, we are proposing to add this new appendix to list the types of claims that will be handled under the new disability claims process and the State agencies that will be using the new process. The proposed appendix includes three paragraphs. In paragraph (a)—''What is this appendix for?''—we briefly note the three major differences between the new process and the current process.

In paragraph (b)—''Why aren't all State agencies using the new disability claims process?''—we explain briefly how we are implementing the rules gradually in the States. We also explain that the appendix is temporary and that we will remove it when all State agencies are using the new process.

Paragraph (c)—''Which claims will be handled under the new disability claims process?''—explains that applications for benefits based on disability processed in certain state agencies come under the new rules. It is central to all of the other rules in this NPRM because we refer back to it to provide the basic criteria for all three of the major features of these proposed rules: The informal disability conference, no reconsideration appeal step, and permitting disability examiners the flexibility to decide whether to obtain medical or psychological consultant input when making the disability determination except in cases in which the Act requires that a medical or psychological consultant participate in making the determination. For example, in proposed §§ 404.930(a)(2) and 416.1430(a)(2), we explain that the first level of appeal for a person who meets the criteria in the proposed appendix is the administrative law judge hearing. (We also include this provision in proposed §§ 404.904(g) and 416.1404(g).) Likewise, we explain in proposed §§ 404.1615(c)(1) and 416.1015(c)(1) that a disability examiner may make the determination in the case of an individual who meets the criteria in the proposed appendix, except in cases requiring by statute participation by a medical or psychological consultant.

Paragraph (d)—''Which State agencies are using the new disability claims process?''—lists the participating State agencies. The State agencies listed in this NPRM are the same State agencies and branches of State agencies that have been participating in the Prototype test. When we decide which State agencies will be in the next group to begin using the new process, we will publish an appropriate notice in the **Federal Register** revising the list.

Sections 404.1512 and 416.912 Evidence of Your Impairment

We propose to revise paragraph (b)(6) of these sections for consistency with the changes we are proposing in §§ 404.1615 and 416.1015. In current §§ 404.1527(f) and 416.927(f), we recognize that State agency medical and psychological consultants are members of the teams that make determinations of disability under the current process. Therefore, we do not consider their administrative findings of fact (*e.g.,* about residual functional capacity) at the initial level to be medical opinions that must be weighed together with the evidence in the case record. However, our regulations have long provided that at the administrative law judge hearing and Appeals Council levels of administrative review, administrative law judges and administrative appeal judges must consider these findings as opinions of nonexamining sources. For this reason, current §§ 404.1512(b)(6) and 416.912(b)(6) provide that our term ''evidence'' includes opinions from State agency medical and psychological consultants when a case is at the administrative law judge hearing or Appeals Council level.

Under the proposed rules, there will now be cases in which disability examiners will make initial determinations when there are opinions from state agency medical or psychological consultants in the claims file. In these cases, we will expect disability examiners to consider these opinions as evidence from nonexamining sources in the same way as administrative law judges and administrative appeals judges. Therefore, we propose to revise §§ 404.1512(b)(6) and 416.912(b)(6) to include disability examiners who make decisions alone.

Sections 404.1526 and 416.926 Medical Equivalence

We propose to revise paragraph (b), ''Medical equivalence must be based on medical findings,'' to be consistent with the changes in these proposed rules that provide an enhanced role for disability examiners in making disability determinations. The current provision requires that in every case we must consider the medical opinion given by one or more medical or psychological consultants designated by the Commissioner in deciding medical equivalence. Under the current process, this requirement is always satisfied at the initial level of administrative review because medical and psychological consultants are always members of teams that make the initial determination and are responsible for this finding.

In view of the changes we are proposing to our process, we now propose to remove this requirement for cases that are adjudicated under the new process. Proposed paragraph (b) would provide that we ''may'' consider the opinion of a medical or psychological consultant designated by the Commissioner, *i.e.,* when a medical consultant provides an opinion on equivalency we will consider it. Under the Full Process Model and the Prototype, we found no evidence that omitting a medical or psychological consultant's opinion from the determination whether an impairment(s) medically equaled a listing lowered the quality of the determinations.

The proposed change would also affect adjudication at the administrative law judge hearing and Appeals Council levels of administrative review (when the Appeals Council makes a decision). Under §§ 404.1526(b) and 416.926(b), and Social Security Ruling (SSR) 96–6p, we require that administrative law judges and administrative appeals judges (when the Appeals Council makes a decision) must also consider the opinion of a medical or psychological consultant designated by the Commissioner when they consider whether an individual's impairment or combination of impairments medically equals a listing. See SSR 96–6p, ''Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence,'' (61 FR 34466, July 2, 1996). In many cases, this requirement is satisfied because State agency medical and psychological consultants have already considered the issue and provided this opinion in connection with the initial and reconsideration determinations. SSR 96–6p provides that their signatures on the determinations satisfy the

requirement to obtain an opinion from a medical or psychological consultant designated by the Commissioner at the administrative law judge hearing and Appeals Council levels of administrative review when an administrative law judge or the Appeals Council finds that an individual's impairment(s) does not medically equal a listing.

However, SSR 96–6p requires that, when an administrative law judge or administrative appeals judge determines that he or she may make a finding that an individual's impairment(s) medically equals a listing, he or she must obtain an updated medical opinion from a medical expert. If the proposed revision in §§ 404.1526(b) and 416.926(b) becomes final, we will remove this requirement for administrative law judges and the Appeals Council, in order to be consistent with the changes for disability examiners.

In current § 416.926, we include a paragraph (d), ''Responsibility for determining medical equivalence,'' which we do not now include in § 404.1526. We propose to add a new paragraph (d) in § 404.1526 that is identical to the paragraph in § 416.926, and to revise the paragraph to incorporate reference to disability examiners who make determinations. The new language would explain that in such cases, the disability examiner is responsible for determining medical equivalence.

Sections 404.1527 and 416.927 Evaluating Opinion Evidence

We propose to revise paragraph (f), ''Opinions of nonexamining sources,'' to include disability examiners when they make disability determinations. As we have already explained under the explanation of the proposed revisions to §§ 404.1512(b)(6) and 416.912(b)(6), these individuals must consider opinions from medical and psychological consultants to be opinion evidence from nonexamining sources in the same way that administrative law judges and the administrative appeals judges do (when the Appeals Council makes a decision).

To reflect this change, we propose to add a new paragraph (f)(2) for disability examiners who make disability determinations. The language in the proposed provision is similar to the provisions for administrative law judges in current paragraph (f)(2). Because we would add a new paragraph (f)(2), we would redesignate current paragraphs (f)(2) and (f)(3) as paragraphs (f)(3) and (f)(4).

We propose minor revisions in paragraph (f)(1) to make clear that the current rules would continue to apply to cases that are adjudicated in State agencies that are not using the new process.

Sections 404.1546 and 416.946 Responsibility for Assessing and Determining Residual Functional Capacity

We propose to revise this section to clarify the responsibility for making assessments of a claimant's residual functional capacity.

The existing, unnumbered paragraph will be replaced by numbered paragraphs that will clarify the responsibility for making assessments of residual functional capacity in various types of claims. We will add a paragraph that will state that a State agency disability examiner may make assessments of residual functional capacity.

Sections 404.1615 and 416.1015 Making Disability Determinations

In paragraph (c) of these sections, we propose to add the rules that will permit disability examiners to make disability determinations in certain cases.

In proposed paragraph (c)(1)(i), we explain that a State agency disability examiner may make the disability determination in cases of individuals who meet the criteria in the appendix and that are not excluded in proposed paragraph (c)(2). We explain that this is not an absolute rule, because each State agency will have the option to decide whether to permit a disability examiner to make these determinations. Our intent is to provide each State agency with the authority to determine whether a given disability examiner is sufficiently skilled to make disability determinations without working in a team with a medical or psychological consultant.

We also provide in the third sentence of the proposed paragraph a reminder that a disability examiner may still request assistance from a medical or psychological consultant. In the prototype States, there have been many cases in which disability examiners sought opinions from medical and psychological consultants on various aspects of claims.

Proposed paragraph (c)(1)(ii) is the same as current paragraph (c)(2).

In the proposed rule, we would redesignate current paragraph (c)(1) as paragraph (c)(2). The current paragraph provides the requirement that a disability examiner and a medical or psychological consultant must make the determination in almost all cases. In the proposed paragraph, we would retain this provision for States that are not yet using the new process in proposed §§ 404.1615(c)(2)(iii) and 416.1015(c)(2)(iv). The reason the part 404 and part 416 sections have different numbers is that there is an additional section (proposed paragraph (c)(2)(iii)) containing the requirement of title XVI of the Act that in any case of a child claiming SSI disability benefits, we must make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to a child's impairment(s) evaluates the case of the child. We decided to make the paragraphs providing the current rule for using teams last so that when we need to revise the rules again after all State agencies are using the new process, we can delete them without having to renumber the paragraphs.

In proposed paragraph (c)(2)(i), we would provide, as required by the Act, that a team must make the determination in any case in which the State agency determines that the individual is not disabled and there is evidence that indicates the existence of a mental impairment. In proposed paragraph (c)(2)(ii) we provide that a State agency may at its option require any disability examiner to work in a team with a medical or psychological consultant.

We are also proposing two changes to current paragraph (c) that are not related to the Prototype. At the end of § 404.1615(c), are two undesignated paragraphs. There is one undesignated paragraph at the end of § 416.1015(c) that contains the same text as the two undesignated paragraphs at the end of § 404.1615(c). The first sentence of both versions provides cross-references to the rules defining ''medical or psychological consultant'' and ''disability hearing officer.'' In the proposed rules, we have moved those cross-references to the appropriate sections of paragraph (c) that address these individuals.

The second sentence explains that State agency disability examiners and disability hearing officers must be qualified to interpret and evaluate medical reports and other evidence as necessary to determine the capacities of the claimant to perform substantial gainful activity. We propose to designate this sentence as paragraph (d) so that it can be cited, and to redesignate all the subsequent paragraphs in the sections. We are not proposing any changes to this sentence.

The second undesignated paragraph at the end of current § 404.1615(c), which is the third sentence in the single undesignated paragraph in current § 416.1015(c), provides a cross-reference to § 404.1572 (in § 404.1615(c)) and to

§ 416.972 (in § 416.1015(c)) ''for what we mean by substantial gainful activity.'' Although these rules do in fact define the term ''substantial gainful activity'' for purposes of evaluating a person's earnings and work activity, the cross-references are misleading in the context of the preceding text. Disability examiners and disability hearing officers do not determine whether claimants who are working are engaging in ''substantial gainful activity'' and do not use the rules in §§ 404.1572 and 416.972. This determination is made in our field offices. Disability examiners and disability hearing officers make determinations about whether an individual is able to work using other rules regarding medical and vocational factors. Therefore, we propose to delete these sentences since they could be confusing.

Other Changes

We are proposing changes to other rules in subparts J, P, and Q of part 404, subparts I, J, and N of part 416, and subparts B and C of part 422. These changes are intended to make these other rules consistent with the proposed changes we have explained above.

Clarity of This Regulation

Executive Order (E.O.) 12866 and the President's memorandum of June 1, 1998, require 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 these proposed rules 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 unclear?
- 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?

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office: *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site for SSA (*i.e., Social Security Online*): *http://www.ssa.gov/.*

Regulatory Procedures

Executive Order 12866 and the Congressional Review Act

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed regulations meet the criteria of an economically significant regulatory action under E.O. 12866 because the impact in any single year exceeds $100 million. Thus, they were subject to OMB review. We have provided below an assessment of the costs and benefits of these proposed rules. It should also be noted that this proposed rule is a major rule under the criteria of the Congressional Review Act (Chapter 8 of 5 U.S.C.).

Program Savings

We do not expect any program savings to result from these regulations.

Program Costs

1. Title II

We estimate that these rules will result in increased program outlays resulting in the following costs (in millions of dollars) to the title II program:

[Million of dollars]

FY2001	FY2002	FY2003	FY2004	FY2005	FY2001–2005	FY2001–2010
70	155	360	751	1,247	2,583	17,105

Related Medicare Costs

[Millions of dollars]

FY2001	FY2002	FY2003	FY2004	FY2005	FY2001–2005	FY2001–2010
	3	26	75	174	277	4,420

2. Title XVI

We estimate that these rules will result in increased program outlays resulting in the following costs (in millions of dollars) to the title XVI program:

[Millions of dollars]

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2001–2005	FY2001–2010
Federal	4	30	81	188	335	638	3,922
State	.....	3	8	19	34	64	392

[Millions of dollars]

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2001–2005	FY2001–2010
Federal	3	40	120	310	576	1,049	8,940
State	2	30	91	234	435	791	6,743

Administrative Savings

We do not expect any administrative savings to result from these regulations.

Administrative Costs

We expect there will be some administrative costs associated with the transition to these rules.

Policy Alternatives

We considered, but did not select, the following policy alternative:

Keep the Current Disability Claim Process

As noted above, the initiative to redesign the disability claim process was critical of several aspects of the current process, including: the time it takes for a final agency decision; the lack of interaction between the claimant and the decisionmaker; and the lack of thorough explanations, in many cases, of the basis for the disability determination. Based on the Full Process Model test and our experience with the prototype so far, we found that the proposed new process results in better determinations at the initial level, with more allowances of claims that should be allowed. Many claims that would have been allowed only after appeal under the old process, were allowed at the initial step of the new process. Eliminating the reconsideration step enables claimants who appeal to reach the hearing level sooner than under the old process, and the resources previously used at the reconsideration step can be used to ensure a more complete determination process at the initial level. These positive results support implementation of the redesigned claim process.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations would impose no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Programs No. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96–004, Social Security—Survivors Insurance; 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 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, Freedom of information, Organization and functions (Government agencies), Social Security.

Dated: January 11, 2001.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts J, P, and Q of part 404, subparts I, J, and N of part 416, and subparts B and C of part 422 of 20 CFR, chapter III as set forth below:

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

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, 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, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

2. Section 404.900 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 404.900 Introduction.

(a) * * *

(2) *Reconsideration.* If you are dissatisfied with an initial determination, except for certain determinations about whether you are disabled (see paragraph (a)(3)(ii) of this section), you may ask us to reconsider it.

(3) *Hearing before an administrative law judge.* You may request a hearing before an administrative law judge if you are dissatisfied with:

(i) A reconsideration determination; or

(ii) Certain initial determinations on your application for benefits based on disability, if you are a person entitled to an informal disability conference, as explained in § 404.904 and appendix 1 to this subpart.

* * * * *

3. Section 404.901 is amended by adding the following definition to the alphabetical list of definitions:

§ 404.901 Definitions

* * * * *

''Fully favorable,'' with respect to a disability determination, means that we determine that: the claimant is disabled; the beginning date of disability is no later than the date alleged by the claimant; and either disability has not ended or, if the claimant alleges that disability has ended, it ended no earlier than the date alleged by the claimant.

* * * * *

4. Section 404.904 is redesignated as Section 404.904a and revised to read as follows:

§ 404.904a Notice of the initial determination.

We will mail a written notice of the initial determination to you at your last known address. The notice will state the reasons for the initial determination and the effect of the initial determination.

The notice also will explain your right to appeal the determination and whether the appeal should be for a reconsideration or a hearing before an administrative law judge. (See §§ 404.900(a), 404.904(g), 404.907, and 404.930, and appendix 1 to this subpart.) We will not mail a notice if the beneficiary's entitlement to benefits has ended because of his or her death.

5. A new section 404.904 is added to read as follows:

§ 404.904 Informal disability conference.

(a) *What is an informal disability conference?* When you file an application for disability benefits, the disability examiner may offer you an opportunity to have an informal disability conference. If your claim is decided by a component of our office other than a State agency, the disability examiner in that component may offer you an opportunity to have an informal disability conference. The purpose of the informal disability conference is to explain how your medical condition relates to our disability requirements, and to make sure that we have all of the information we need to make a determination about whether you are disabled. We will offer you an informal disability conference if all of the following apply in your case:

(1) Based on the evidence in your case record, it appears that we will not be able to make a fully favorable disability determination. However, we will not offer you an informal disability conference if the determination is less than fully favorable because:

(i) You are, or were, engaging in substantial gainful activity; or

(ii) You fail to cooperate in the processing of your claim; or

(iii) You fail to meet one or more eligibility requirement that is not related to your medical condition (*e.g.,* insured status).

(2) Your claim meets the requirements in paragraphs (c) and (d) of Appendix 1 of this subpart (claims for disability being determined by certain State agencies).

(b) *Notification.* We will notify you in writing to offer you the conference. You may choose to have a conference or not have a conference. If you have an attorney or other representative, we will also notify that person about the conference. The attorney or representative may participate in the conference.

(c) *How will my informal disability conference be held?* In most cases, we will hold your informal disability conference by telephone. In some cases, we may ask you to come to the State agency for a conference in person. We may also ask you to go to a location near you for a videoconference. We will decide how your conference will be held.

(d) *What happens during the informal disability conference?* The disability examiner will have an informal conversation with you. If he or she has not already done so in earlier conversations, the disability examiner will explain our disability standard. He or she also will tell you why the evidence in your case does not appear to support a fully favorable determination. You will have a chance to give us any information that we may not have. If you want to give us information that we need to make a determination, we will give you a chance to get the information or we will try to get it for you, following our rules in § 404.1512.

(e) *What happens if I decide not to have an informal disability conference?* If you decide not to have a conference, we will make an initial determination based on the information that we have.

6. Section 404.905 is revised to read as follows:

§ 404.905 Effect of an initial determination.

Our initial determination is final unless you request appeal (see § 404.907) within the stated time period, or we revise the determination.

7. Section 404.907 is revised to read as follows:

§ 404.907 Reconsideration—general.

(a) If you are dissatisfied with the initial determination, reconsideration is the first step in the administrative review process that we provide, except for the following determinations. In these cases, the next step in the administrative review process is to the administrative law judge hearing level.

(1) Determinations described in § § 404.930(a)(6) and (a)(7), where you appeal an initial determination denying your request for waiver or adjustment or recovery of an overpayment (see § 404.506).

(2) If you meet the requirements in paragraphs (c) and (d) of Appendix 1 of this subpart, an initial determination about whether you are disabled that is not fully favorable to you, except for a determination based on a finding that you are, or were, engaging in substantial gainful activity. (See appendix 1 to this subpart.)

(b) If you are dissatisfied with our reconsidered determination, you may request a hearing before an administrative law judge.

8. Section 404.908 is amended by revising paragraph (a) to read as follows:

§ 404.908 Parties to a reconsideration.

(a) *Who may request a reconsideration.* If you are dissatisfied with our initial determination, you may request that we reconsider it, unless you are entitled to request a hearing before an administrative law judge, as we explain in § 404.930 and Appendix 1 of this subpart. In addition, a person who shows in writing that his or her rights may be adversely affected by the initial determination may request a reconsideration.

* * * * *

9. Section 404.930 is amended by redesignating existing paragraphs (a)(2) through (a)(7) as paragraphs (a)(3) through (a)(8), and adding a new paragraph (a)(2) to read as follows:

§ 404.930 Availability of a hearing before an administrative law judge.

(a) * * *

(2) an initial determination about whether you are disabled that is not fully favorable to you, unless that determination was about whether you are engaging or were engaging in substantial gainful activity, if your claim meets the requirements in paragraphs (c) and (d) of Appendix 1 of this subpart;

* * * * *

10. Section 404.948 is amended by revising the heading of paragraph (a) to read as follows:

§ 404.948 Deciding a case without an oral hearing before an administrative law judge.

(a) *Decision fully favorable.* * * *

* * * * *

11. A new appendix 1 to subpart J is added to read as follows:

Appendix 1—Claims That Will Be Handled Under the New Disability Claims Process

(a) *What is this appendix for?* This appendix lists the types of claims that will be handled under the new disability claims process, and which State agencies will participate in the process. Individuals who meet the criteria in paragraphs (c) and (d) of this appendix, except for individuals whose determinations of disability are based on a finding that they are, or were, engaging in substantial gainful activity, may appeal to an administrative law judge hearing if they are dissatisfied with their initial determinations. In the States listed in paragraph (d), a disability examiner is responsible for making the disability determination in certain cases. The disability examiner will have the flexibility to decide whether input from a medical or psychological consultant is needed in making the disability determination. See §§ 404.1615 and 416.1015. Individuals who also meet the criteria in § 404.904(a) of this section or § 416.1404 of part 416 and whose State agencies are using the new claims process

will be offered an informal disability conference.

(b) *Why aren't all State agencies using the new disability claims process?* We are phasing in the new process gradually, because each State will need substantial lead time for training and preparation, and we must retain our capacity to process new claims as timely as possible during implementation. This means that we will add more State agencies to this list from time-to-time until all State agencies are using the new process. When all State agencies are using the new process, we will delete this appendix and the new process will apply to everyone.

(c) *Which claims will be handled under the new disability claims process?* Your claim will be handled under the new process if you filed an application for benefits (disability insurance benefits or Supplemental Security Income) based on disability or blindness and if your case is processed in one of the State agencies listed in paragraph (d) of this appendix.

(d) *Which State agencies are using the new disability claims process?* The following State agencies are using the new process:

Alabama; Alaska; California (North Los Angeles and West Los Angeles branches); Colorado; Louisiana; Michigan; Missouri; New Hampshire; New York (Brooklyn and Albany branches); Pennsylvania.

12. 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), 104–193, 110 Stat. 2105, 2189.

13. Section 404.1512 is amended by revising paragraph (b)(6) to read as follows:

§ 404.1512 Evidence of your impairment.

* * * * *

(b) * * *

(6) 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 expressed by medical experts we consult based on their review of the evidence in your case record. See § § 404.1527(f)(2) and (f)(3).

* * * * *

14. Section 404.1526 is amended by revising the last sentence of paragraph (b) and by adding a new paragraph (d) to read as follows:

§ 404.1526 Medical equivalence.

* * * * *

(b) * * * We may request, and will consider if requested, any medical opinion from one or more medical or psychological consultants designated by the Commissioner when we decide medical equivalence. (See § 404.1616.)

* * * * *

(d) *Responsibility for determining medical equivalence.* In cases where the State agency or other designee of the Commissioner makes the initial disability determination, a disability examiner is responsible for determining medical equivalence in cases in which a medical or psychological consultant does not make the determination together with the disability examiner (see § 404.1615 and Appendix 1 of subpart J). In cases in which a medical or psychological consultant makes the determination together with the disability examiner, the medical or psychological consultant is responsible for assessing medical severity, and the disability examiner and medical or psychological consultant are jointly responsible 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 § 404.918, with the Associate Commissioner for Disability 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.

15. Section 404.1527 is amended by revising paragraph (f)(1), by redesignating existing paragraphs (f)(2) and (f)(3) as paragraphs (f)(3) and (f)(4) and by adding a new paragraph (f)(2) to read as follows:

§ 404.1527 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In some cases, State agency medical and psychological consultants are members of teams that make initial determinations of disability (see § 404.1615(c)(2)). In these cases, 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. These administrative findings of fact are based on the evidence in your case record but they are not themselves evidence at this step.

(2) In other cases, a State agency disability examiner is responsible for making the initial determination (see § 404.1615(c)(1)). In these cases, the disability examiner may obtain the opinion of a State agency medical or psychological consultant with respect to 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. In these cases, State agency disability examiners weigh any opinions provided by State agency medical or psychological consultants in accordance with these rules. State agency medical and psychological consultants are highly qualified and are also experts in Social Security disability evaluation. See § 404.1512(b)(6). When a State agency disability examiner considers findings of a State agency medical or psychological consultant, the State agency disability examiner will evaluate the findings using relevant factors in paragraphs (a) through (e) of this section, such as the medical or psychological consultant's medical specialty and expertise in our rules, the supporting explanations provided by the medical or psychological consultant, and any other factors relevant to the weighing of the opinions.

* * * * *

16. Section 404.1529 is amended by revising the third sentence of paragraph (b) and by adding a new fourth sentence to paragraph (b) to read as follows:

§ 404.1529 How we evaluate symptoms, including pain.

* * * * *

(b) *Need for medically determinable impairment that could reasonably be expected to produce your symptoms, such as pain.* * * * In some cases at the initial step in the administrative review process, and all cases at the reconsideration step, a State agency medical or psychological consultant (or other 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 (see § 404.1615(c)(2)). In other cases at the initial step of the administrative review process, a State agency disability examiner may ask for and consider the opinion of a State agency medical or psychological consultant in determining whether your medically determinable impairment(s) could reasonably be expected to

produce your alleged symptoms (see § 404.1615). * * *

* * * * *

17. Section 404.1546 is revised to read as follows:

§ 404.1546 Responsibility for assessing and determining residual functional capacity.

(a) *Initial determinations.* (1) In cases in which a State agency disability determination is made by a team consisting of a State agency disability examiner and a medical or psychological consultant, the medical or psychological consultant is responsible for assessing your residual functional capacity (see § 404.1615(c)(2)).

(2) In cases in which a State agency disability examiner makes the disability determination, the State agency disability examiner is responsible for assessing your residual functional capacity (see § 404.1615(c)(1)).

(b) *Disability hearing cases.* For cases in the disability hearing process, the responsibility for deciding your residual functional capacity rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 404.918, with the Associate Commissioner for Disability or his or her delegate.

(c) *Administrative law judge or Appeals Council cases.* For cases at the Administrative Law Judge or Appeals Council level, the administrative law judge or Appeals Council is responsible for assessing your residual functional capacity.

18. 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)).

19. Section 404.1615 is amended by revising paragraph (c), by redesignating the first undesignated paragraph following paragraph (c)(3) as paragraph (d), by removing the second undesignated paragraph following paragraph (c)(3), by revising new paragraph (d), and by redesignating existing paragraphs (d), (e), (f), and (g), as paragraphs (e), (f), (g), and (h), to read as follows:

§ 404.1615 Making disability determinations.

* * * * *

(c) The following individuals in the State agency will make disability determinations:

(1)(i) If your claim meets the requirements in paragraphs (c) and (d) of Appendix 1 of subpart J, a State agency disability examiner is responsible for making the disability determination in your claim, unless it is a claim described in (c)(2) of this section. The State agency disability examiner may request advice from a State agency medical or psychological consultant on the medical aspects of your impairment.

(ii) In any State agency, a State agency disability examiner may make the disability determination when there is no medical evidence to be evaluated (i.e., no medical evidence exists or we are unable, despite making every reasonable effort, to obtain any medical evidence that may exist) and the individual fails or refuses, without a good reason, to attend a consultative examination (see § 404.1518).

(2) A State agency medical or psychological consultant (see § 404.1616) and a State agency disability examiner together will make the disability determination in the following situations:

(i) Any case in which the State agency determines that you are not disabled and there is evidence that indicates the existence of a mental impairment, as described in paragraph (e) of this section;

(ii) Any case in which the State agency decides to require a State agency medical or psychological consultant and a State agency disability examiner to make the disability determination together; and

(iii) Any case, if your claim does not meet the requirements in paragraphs (c) and (d) of Appendix 1 of subpart J.

(3) A State agency disability hearing officer (see § 404.915).

(d) The State agency disability examiner and disability hearing officer must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity.

* * * * *

20. Section 404.1616 is amended by revising paragraph (a) to read as follows:

§ 404.1616 Medical or psychological consultants.

(a) *What is a medical consultant?* A medical consultant is a person who is a member of a team that makes disability determinations in a State agency, as explained in § 404.1615(c)(2), or who provides advice to a State agency disability examiner, as explained in § 404.1615(c)(1). A medical consultant may also be a person who serves the same functions for us when a federal component makes the disability determination.

* * * * *

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

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

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

22. Section 416.912 is amended by revising paragraph (b)(6) to read as follows:

§ 416.912 Evidence of your impairment.

* * * * *

(b) * * *

(6) 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 expressed by medical experts we consult based on their review of the evidence in your case record. See §§ 416.1527(f)(2) and (f)(3).

* * * * *

23. Section 416.926 is amended by revising the last sentence of paragraph (b) and by adding a new paragraph (d) to read as follows:

§ 416.926 Medical equivalence for adults and children.

* * * * *

(b) * * * We may request, and will consider if requested, any medical opinion from one or more medical or psychological consultants designated by the Commissioner when we decide medical equivalence. (See § 416.1016.)

* * * * *

(d) *Responsibility for determining medical equivalence.* In cases where the State agency or other designee of the Commissioner makes the initial disability determination, a disability examiner is responsible for determining medical equivalence in cases in which a medical or psychological consultant does not make the determination together with the disability examiner (see § 416.1015 and Appendix 1 of subpart J). In cases in which a medical or psychological consultant makes the determination together with the disability examiner, the medical or psychological consultant is responsible for assessing medical severity, and the disability examiner and medical or

psychological consultant are jointly responsible 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 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.

24. Section 416.927 is amended by revising paragraph (f)(1), by redesignating existing paragraphs (f)(2) and (f)(3) as paragraphs (f)(3) and (f)(4) and by adding a new paragraph (f)(2) to read as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In some cases, State agency medical and psychological consultants are members of teams that make initial determinations of disability (see § 416.1015(c)(2)). In these cases, 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. These administrative findings of fact are based on the evidence in your case record but they are not themselves evidence at this step.

(2) In other cases, a State agency disability examiner is responsible for making the initial determination (see § 416.1015(c)(1)). In these cases, the disability examiner may obtain the opinion of a State agency medical or psychological consultant with respect to 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. In these cases, State agency disability examiners weigh any opinions provided by State agency medical or psychological consultants in accordance with these rules. State agency medical and psychological consultants are trained and are also experts in Social Security disability evaluation. See § 416.912(b)(6). When a State agency disability examiner considers findings of a State agency medical or psychological consultant, the State agency disability examiner will evaluate the findings using relevant factors in paragraphs (a) through (e) of this section, such as the medical or psychological consultant's medical specialty and expertise in our rules, the supporting explanations provided by the medical or psychological consultant, and any other factors relevant to the weighing of the opinions.

* * * * *

25. Section 416.929 is amended by revising the third sentence of paragraph (b) and by adding a new fourth sentence to paragraph (b) to read as follows:

§ 416.929 How we evaluate symptoms, including pain.

* * * * *

(b) *Need for medically determinable impairment that could reasonably be expected to produce your symptoms, such as pain.* * * * In some cases at the initial step in the administrative review process, and all cases at the reconsideration step, a State agency medical or psychological consultant (or other 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 (see § 416.1015(c)(2)). In other cases at the initial step of the administrative review process, a State agency disability examiner may ask for and consider the opinion of a State agency medical or psychological consultant in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms (see § 416.1015). * * *

* * * * *

26. Section 416.946 is revised to read as follows:

§ 416.946 Responsibility for assessing and determining residual functional capacity.

(a) *Initial determinations.* (1) In cases in which a State agency disability determination is made by a team consisting of a State agency disability examiner and a medical or psychological consultant, the medical or psychological consultant is responsible for assessing your residual functional capacity (see § 416.1015(c)(2)).

(2) In cases in which a State agency disability examiner makes the disability determination, the State agency disability examiner is responsible for assessing your residual functional capacity (see § 416.1015(c)(1)).

(b) *Disability hearing cases.* For cases in the disability hearing process, the responsibility for deciding your residual functional capacity rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 416.1418, with the Associate Commissioner for Disability or his or her delegate.

(c) *Administrative law judge or Appeals Council cases.* For cases at the Administrative Law Judge or Appeals Council level, the administrative law judge or Appeals Council is responsible for assessing your residual functional capacity.

27. 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).

28. Section 416.1015 is amended by redesignating paragraphs (d) through (h) as paragraphs (e) through (i), by redesignating the undesignated paragraph following paragraph (c)(3) as paragraph (d) and revising it, and by revising paragraph (c) to read as follows:

§ 416.1015 Making disability determinations.

* * * * *

(c) The following individuals in the State agency will make disability determinations:

(1) (i) If your claim meets the requirements of paragraphs (c) and (d) of Appendix 1 of subpart J, part 404 of this chapter, a State agency disability examiner is responsible for making the disability determination in your claim, unless it is a claim described in (c)(2) of this section. The State agency disability examiner may request advice from a State agency medical or psychological consultant on the medical aspects for your impairment.

(ii) In any State agency, a State agency disability examiner may make the disability determination when there is no medical evidence to be evaluated (*i.e.,* no medical evidence exists or we are unable, despite making every reasonable effort, to obtain any medical evidence that may exist) and the individual fails or refuses, without a good reason, to attend a consultative examination (see § 416.918).

(2) A State agency medical or psychological consultant (see § 416.1016) and a State agency disability examiner together will make the disability determination in the following situations:

(i) Any case in which the State agency determines that you are not disabled and there is evidence that indicates the existence of a mental impairment, as described in paragraph (e) of this section;

(ii) Any case in which the State agency decides to require a State agency medical or psychological consultant and a State agency disability examiner to make the disability determination together; and

(iii) Any case of a child claiming disability benefits, as described in paragraph (f) of this section;

(iv) Any case, if your claim does not meet the requirements in paragraphs (c) and (d) of Appendix 1 of subpart J, part 404 of this chapter.

(3) A State agency disability hearing officer (see § 416.1015).

(d) The State agency disability examiner and disability hearing officer must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity.

* * * * *

29. Section 416.1016 is amended by revising paragraph (a) to read as follows:

§ 416.1016 Medical or psychological consultants.

(a) *What is a medical consultant?* A medical consultant is a person who is a member of a team that makes disability determinations in a State agency, as explained in § 416.1015(c)(2), or who provides advice to a State agency disability examiner, as explained in § 416.1015(c)(1). A medical consultant may also be a person who serves the same functions for us when a federal component makes the disability determination.

* * * * *

30. 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); 31 U.S.C. 3720A.

31. Section 416.1400 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 416.1400 Introduction.

(a) * * *

(2) *Reconsideration.* If you are dissatisfied with an initial determination, except for certain determinations about whether you are disabled (see (a)(3)(ii) of this section), you may ask us to reconsider it.

(3) *Hearing before an administrative law judge.* You may request a hearing before an administrative law judge if you are dissatisfied with:

(i) A reconsideration determination; or

(ii) Certain initial determinations on your application for benefits based on disability, if you are a person entitled to an informal disability conference, as explained in § 416.1404 and appendix 1 to subpart J of part 404 of this chapter.

* * * * *

32. Section 416.1401 is amended by adding the following definition to the alphabetical listing of definitions in this section, to read as follows:

§ 416.1401 Definitions.

* * * * *

''Fully favorable'' with respect to a disability determination, means that we determine that: the claimant is disabled; the beginning date of disability is no later than the date alleged by the claimant; and either disability has not ended or, if the claimant alleges that disability has ended, it ended no earlier than the date alleged by the claimant.

* * * * *

33. Section 416.1404 is redesignated as Section 416.1404a and revised to read as follows:

§ 416.1404a Notice of the initial determination.

(a) We will mail a written notice of the initial determination to you at your last known address. Generally, we will not send a notice if your benefits are stopped because of your death, or if the initial determination is a redetermination that your eligibility for benefits and the amount of your benefits have not changed.

(b) The written notice that we send will tell you:

(1) What our initial determination is;

(2) The reasons for our determination; and

(3) What rights you have to a reconsideration of the determination or a hearing before an administrative law judge. (See § § 416.1400(a), 416.1404(g), 416.1407, and 416.1430, and appendix 1 to subpart J of part 404 of this chapter.)

(c) If our initial determination is that we must suspend, reduce or terminate your benefits, the notice will also tell you that you have a right to a reconsideration before the determination takes effect (see § 416.1336).

34. A new section 416.1404 is added to read as follows:

§ 416.1404 Informal disability conference.

(a) *What is an informal disability conference?* When you file an application for disability benefits, the disability examiner may offer you an opportunity to have an informal disability conference. If your claim is decided by a component of our office other than a State agency, the disability examiner in that component may offer you an opportunity to have an informal disability conference. The purpose of the informal disability conference is to explain how your medical condition relates to our disability requirements, and to make sure that we have all of the information we need to make a determination about whether you are disabled. We will offer you an informal disability conference if all of the following apply in your case:

(1) Based on the evidence in your case record, it appears that we will not be able to make a fully favorable disability determination. However, we will not offer you an informal disability conference if the determination is less than fully favorable because:

(i) You are, or were, engaging in substantial gainful activity; or

(ii) You fail to cooperate in the processing of your claim; or

(iii) You fail to meet one or more eligibility requirement that is not related to your medical condition (e.g., limitations on income and resources).

(2) Your claim meets the requirements of paragraphs (c) and (d) of appendix 1, subpart J of part 404.

(b) *Notification* We will notify you in writing to offer you the conference. You may choose to have a conference or not have a conference. If you have an attorney or other representative, we will also notify that person. The attorney or representative may participate in the conference.

(c) How *will my informal disability conference be held?* In most cases, we will hold your informal disability conference by telephone. In some cases, we may ask you to come to the State agency for a conference in person. We may also ask you to go to a location near you for a videoconference. We will decide how your conference will be held.

(d) *What happens during the informal disability conference?* The disability examiner will have an informal conversation with you. If he or she has not already done so in earlier conversations, he or she will explain our disability standard. He or she also will tell you why the evidence in your case does not appear to support a fully favorable determination. You will have a chance to provide information that we may not have. If you want to give us information that we need to make a determination, we will give you a chance to get the information or we will try to get it for you, following our rules in § 416.912.

(e) *What happens if I decide not to have an informal disability conference?* If you decide not to have a conference, we will make an initial determination based on the information that we have.

35. Section 416.1405 is revised to read as follows:

§ 416.1405 Effect of an initial determination.

Our initial determination is final unless you request a reconsideration or an administrative law judge hearing within the stated time period, or we revise the determination.

36. Section 416.1407 is revised to read as follows:

§ 416.1407 Reconsideration—general.

If you are dissatisfied with the initial determination, reconsideration is the first step in the administrative review process that we provide, with one exception. If your claim meets the requirements of paragraphs (c) and (d) of Appendix 1, subpart J, part 404 of this chapter, and we make an initial determination about whether you are disabled that is not fully favorable to you, except for a determination based on a finding that you are, or were, engaging in substantial gainful activity, the next step in the administrative review process is to the administrative law judge hearing level. If you are dissatisfied with our reconsidered determination, you may request a hearing before an administrative law judge.

37. Section 416.1408 is amended by revising paragraph (a) to read as follows:

§ 416.1408 Parties to a reconsideration.

(a) *Who may request a reconsideration.* If you are dissatisfied with our initial determination, you may request that we reconsider it, unless you are entitled to request a hearing before an administrative law judge, as we explain in § 416.1430 and appendix 1 of subpart J, part 404 of this chapter. In addition, a person who shows in writing that his or her rights may be adversely affected by the initial determination may request a reconsideration.

* * * * *

38. Section 416.1430 is amended by redesignating existing paragraphs (a)(2), (a)(3), and (a)(4) as paragraphs (a)(3), (a)(4), and (a)(5), and by adding a new paragraph (a)(2) to read as follows:

§ 416.1430 Availability of a hearing before an administrative law judge.

(a) * * *

(2) An initial determination about whether you are disabled that is not fully favorable to you, unless that determination was about whether you are engaging or were engaging in substantial gainful activity, if your claim meets the requirements of paragraphs (c) and (d) of appendix 1 of subpart J, part 404 of this chapter;

* * * * *

39. Section 416.1448 is amended by revising the heading of paragraph (a) to read as follows:

§ 416.1448 Deciding a case without an oral hearing before an administrative law judge.

(a) *Decision fully favorable.* * * *

* * * * *

PART 422—ORGANIZATION AND PROCEDURES

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

Authority: Secs. 205, 232, and 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–l, and 1320b–13).

41. Section 422.140 is amended by revising the first sentence to read as follows:

§ 422.140 Reconsideration of initial determination.

Except in the case of certain determinations regarding disability (see § 404.930 and appendix 1 of subpart J, part 404 of this chapter), any party who is 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, or the amount of hospital insurance benefits, may request that the Social Security Administration reconsider such determination. * * *

42. 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).

43. Section 422.203 is amended by revising the first sentence of paragraph (a)(1), by redesignating paragraph (c) as paragraph (c)(1), and by adding paragraph (c)(2) to read as follows:

§ 422.203 Hearings.

(a) * * * (1) After certain determinations regarding disability (see § 404.930 and appendix 1 of subpart J, part 404 of this chapter), and after a reconsidered or a revised determination (i) of a claim for benefits or any other right under title II of the Social Security Act; or (ii) of eligibility or amount of benefits or any other matter under title XVI of the Act, except where an initial or reconsidered determination involving an adverse action is revised, after such revised determination has been reconsidered; or (iii) as to entitlement under part A or part B of title XVIII of the Act, or as to the amount of benefits under part A of such title XVIII (where the amount in controversy is $100 or more); or of health services to be provided by a health maintenance organization without additional costs (where the amount in controversy is $100 or more); or as to the amount of benefits under part B of title XVIII (where the amount in controversy is $500 or more); or as to a determination by a peer review organization (PRO) under title XI (where the amount in controversy is $200 or more); or as to certain determinations made under section 1154, 1842(1), 1866(f)(2), or 1879 of the Act; any party to such a determination may, pursuant to the applicable section of the Act, file a written request for a hearing on the determination. * * *

* * * * *

(c) * * *

(2) Unless for good cause shown on extension of time has been granted, a request for hearing must be filed within 60 days after the receipt of the notice of the reconsidered or revised determination, or after an initial determination described in § 404.900(a)(3)(ii), 42 CFR 498.3(b) and (c) (see §§ 404.933, 410.631, and 416.1433 of this chapter and 42 CFR 405,722, 498.40, and 417.260.)

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