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December 15, 2005

to: PABSS, BPAO, EDI

from: Ray Cebula

**re: NPRM, Continuing Disability Review Failure to
Cooperate Process, December 5, 2005**

The Commissioner of SSA has released a notice of public rulemaking concerning failure to cooperate in the CDR and age 18 review processes. Comments must be submitted by February 3, 2006, in order to be considered by the Commissioner during the promulgation of final regulations. Comments can be submitted via the web on the SSA website: www.socialsecurity.gov

What is the purpose of this notice of proposed rulemaking?

This NPRM will provide SSA with the authority to suspend disability benefits in both the Title II and Title XVI programs when the individual fails to provide necessary information (failure to cooperate) during a continuing disability review (CDR) or age 18 review process. Should the individual's benefits remain suspended for 12 months for this reason a termination will occur in month 13. The failure to cooperate, without good cause, is one of the existing exceptions to the use of the medical improvement standard during the CDR process.

A "general principle" is that when a CDR or age 18 review begins, the individual has the responsibility to cooperate with SSA and/or take any action SSA deems necessary to complete the process. If the individual fails to cooperate SSA will find that the disability has ended.

There is currently no provision to suspend Title II benefits however general suspension authority exists under Title XVI. This proposal will provide specific authority and guidance for suspensions for failure to cooperate with the CDR and age 18 review.

This NPRM is intended to make the rules concerning cooperation in the review processes consistent for all beneficiaries and would initially suspend benefits, rather than terminate eligibility.

The specific proposals are set forth below:

SSDI PROPOSALS

CURRENT REGULATION

PROPOSED REGULATION

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| <p>20 CFR 404.1587 – Circumstances under which we may suspend and terminate your benefits before we make a determination.</p> <p>We will suspend your benefits if all of the information we have clearly shows that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when you are blind as defined in the law and age 55 or older and you have returned to work similar to work you previously performed.</p> | <p>a) We will suspend your benefits if you are not disabled. We will suspend your benefits if all of the information we have clearly shows that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when you are blind as defined in the law and age 55 or older and you have returned to work similar to work you previously performed.</p> <p>(b) We will suspend your benefits if you fail to comply with our request for necessary information. We will suspend your benefits effective with the month in which it is determined in accordance with Sec. 404.1596(b)(2)(i) that your disability benefits should stop due to your failure, without good cause, to comply with our request for necessary information. When we have received the information, we will continue with the CDR process and reinstate your benefits for any previous month for which they are otherwise payable.</p> <p>(c) We will terminate your benefits. We will terminate your benefits following 12 consecutive months of benefit suspension because you did not comply with our request for information in accordance with Sec. 404.1596(b)(2)(i). We will count the 12-month suspension period from the start</p> |
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| | of the first month that you stopped receiving benefits (see paragraph (b) of this section). This termination is effective with the start of the 13th month after the suspension began because you failed to cooperate. |
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The proposal makes it clear that benefits can be terminated or suspended. Benefits would be suspended upon notice for failure to cooperate with the review process. Should the individual provide the requested information or take the requested action, SSA will then reinstate benefits for current and previous months, and begin to process the review. Should benefits remain suspended for 12 months, a termination would occur in month 13. Appeal rights will attach to the benefits termination without the right to benefits pending the appeal.

CURRENT REGULATION

PROPOSED REGULATION

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| <p>20 CFR 404.1596 - Circumstances under which we may suspend and terminate your benefits before we make a determination.</p> <p>NO CURRENT LANGUAGE</p> | <p>***</p> <p>(d) When the suspension is effective. We will suspend your benefits effective with the month in which it is determined in accordance with Sec. 404.1596(b)(2)(i) that your disability benefits should stop due to your failure, without good cause, to comply with our request for necessary information for your continuing disability review. This review is to determine whether or not you continue to meet the disability requirements of the law. When we have received the information, we will continue with the CDR process and reinstate your benefits for any previous month for which they are otherwise payable.</p> <p>(e) When we will terminate your benefits. We will terminate your benefits following 12 consecutive months of</p> |
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| | <p>benefit suspension because you did not comply with our request for information in accordance with Sec. 404.1596(b)(2)(i). We will count the 12-month suspension period from the start of the first month that you stopped receiving benefits (see paragraph (d) of this section). This termination is effective with the start of the 13th month after the suspension began because you failed to cooperate.</p> |
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See discussion above. This section applies specifically to disability CDRs whereas the above section refers directly to disability based on blindness.

SSI PROPOSALS

CURRENT REGULATION

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| <p>20 CFR 416.992 – What happens if you fail to comply with our request for information.</p> <p>NO CURRENT LANGUAGE</p> | <p>We will suspend your payments before we make a determination regarding your continued eligibility for disability payments if you fail to comply with our request for information for your continuing disability review or age-18 redetermination. The suspension is effective with the month in which it is determined in accordance with Sec. 416.1322 that your eligibility for disability payments has ended due to your failure to comply with our request for necessary information. When we have received the information, we will continue with the CDR or age-18 redetermination process, and reinstate your payments for any previous month for which they are otherwise payable. We will terminate your eligibility for payments following 12 consecutive months of payment</p> |
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| | suspension as discussed in Sec. 416.1335. |
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This section of the proposal clarifies the notion that termination or suspension of payments is also available during the disability CDR and age 18 reviews associated with the SSI program. The suspension, termination, and appeal process are identical to those outlined above in the Title II sections of the NPRM.

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