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MEMO

to: PABSS and BPAO staff
from: Ray Cebula (rewrite 10/19/05)
re: Final EXR regs effective 10/31/05

The Commissioner of SSA released final regulations concerning Expedited Reinstatement. These regs will be effective on 10/31/05. The full text of the regulations, including the Commissioner's introductory remarks and discussion of public comments can be found on the SSA website: www.socialsecurity.gov

What follows is a summary of the final regulations. This is intended to be quick review to supplement your knowledge and is not intended to replace your review of the entire regulatory statement.

Introduction

Congress stated that the purpose of the Ticket to Work Act was to encourage disabled and blind beneficiaries to return to work by providing assurance that benefits could be easily restored, in a timely manner, when necessary. The expedited reinstatement (EXR) provision allows benefits based on disability or blindness to be reinstated without filing a new application when benefits were terminated due to work activity during the past 5 year period and the beneficiary is no longer able to work (at SGA levels) due to the same, or a substantially related, medical condition. **The final rules do not require that the work activity stopped because of the beneficiary's medical condition; only that the beneficiary is currently unable to work at SGA levels.**

EXR does not prohibit a beneficiary from filing a new application using the initial application process. EXR allows SSA to reinstate prior entitlement to a period of disability and disability benefits. To determine eligibility for EXR payments, SSA will use the medical improvement standard, generally associated with medical CDRs, to determine if there has been medical improvement and that improvement is related to the beneficiary's ability to work at SGA levels.

EXR benefits (provisional benefits) are available for a period of up to 6 months. Title II (SSDI) beneficiaries can be paid EXR beginning the month the request for EXR payments is filed. As with other Title II benefits, benefits can be paid for the period during the 12 months prior to EXR application should the beneficiary meet the eligibility criteria. Title XVI (SSI) beneficiaries can be paid EXR beginning the month following the month of filing.

EXR payments can terminate earlier than 6 months when SSA makes a decision concerning eligibility prior to the end of the 6 month provisional benefits period. A Title II beneficiary's provisional benefits period will also end if the beneficiary engages in SGA before the end of the provisional period. Title II provisional benefits will be based on the prior benefit amount that was actually payable under the earlier application for Title II benefits.

SSA's determination concerning the beneficiary's eligibility for provisional benefits under the EXR application is NOT an initial determination and, as such, does not give rights to any administrative appeal process. However, should an EXR application be denied, a second application can be filed later if the beneficiary believes s/he now meets the EXR requirements. The only bar to a second EXR application is the actual receipt of EXR payments. A denied EXR application will then be treated as a protective filing date for a new application based upon the date of EXR filing.

EXR is also available to a beneficiary whose benefits were stopped due to the performance of SGA and SSA later, via a medical CDR, determined that the beneficiary is no longer disabled because of medical improvement. This type of medical CDR would generally be on the basis of Medicare entitlement.

When benefits have been reinstated by the allowance of an EXR application, the beneficiary is entitled to a 24-month initial reinstatement period. This period begins with the first month a beneficiary's payments are reinstated and ends after the month during which the 24th cash payment is made. These months do not need to be consecutive. For Title II beneficiaries, benefits will be payable in any month in which the beneficiary does not perform SGA. For Title XVI beneficiaries, benefits are payable using the usual SSI calculation method to determine if a cash benefit is payable.

After the 24-month initial reinstatement period ends, the beneficiary is then entitled to additional work incentives, e.g. TWP, as well as future EXR possibilities should this become necessary.

Specific Regulations (paraphrased)

SSDI PROVISIONS

20 CFR 404.1592b – What is expedited reinstatement?

20 CFR 404.1592c – Who is entitled to expedited reinstatement?

(a) you can have your entitlement to benefits reinstated under expedited reinstatement if –

(1) you were previously entitled to benefits on your own record, as a disabled widow/er, as a disabled child, or to Medicare based on disability and are a Medicare qualified government employee.

(2) your disability entitlement terminated because you performed SGA.

(3) you file a request for EXR in a timely manner or have good cause for not filing timely.

(4) in the month in which you file your request for reinstatement

(i) you are not able to perform SGA because of your medical condition,

(ii) your current impairment is the same as or related to the impairment SSA as the basis of your previous entitlement,

(iii) you are currently disabled under the medical improvement standard.

(b) discusses eligibility of auxiliaries who had previously received benefits on the insured worker's account. Remember that all auxiliaries must request reinstatement and be currently eligible to receive benefits on the insured worker's record.

(c) SSA will determine that you are not able to perform SGA based upon your medical condition when

(1) you certify that you are unable to perform SGA because of your medical condition,

(2) you do not perform SGA in the month you file your EXR request,

(3) SSA determines that you are disabled according to the medical improvement standard.

20 CFR 404.1592d – How do I request reinstatement?

(a) you must make your request in writing.

(b) on or after January 1, 2001.

(c) you must provide information to SSA so that a determination can be made.

(d) if you request reinstatement, SSA must

(1) receive the request within the 60 consecutive month period that begins with the month in which your benefits were terminated due to your performance of SGA, or you have good cause to have missed the 60 month deadline.

(2) you must certify that you are disabled, that your current impairment is the same, or related, to the previously qualifying impairment and that you are unable to perform SGA because of your current medical condition.

20 CFR 404.1592e – How do we determine provisional benefits?

(a) you may receive up to 6 months of provisional cash and Medicare benefits while SSA determines reinstatement eligibility.

(1) you will be paid provisional benefits beginning in the month in which you file your request for reinstatement.

(2) you will be paid an amount equal to your prior entitlement (equal to the actual benefit paid the month before the month of termination) increased by any applicable COLAs.

(3) if you are entitled to another monthly benefit for this period of time you will receive the higher of the two.

(4) if you request reinstatement for more than one benefit you will receive the higher of the benefits determined payable.

(5) if you are eligible for SSI payments, including provisional payments, your provisional Title II payments will be reduced if applicable.

(6) benefits will not be reduced if provisional benefits cause total benefits payable to exceed the family maximum.

(b) you cannot receive provisional benefits or Medicare a second time when
(1) you request reinstatement,
(2) you previously received provisional cash and Medicare based upon a prior request, and
(3) your requests are for the same previous disability entitlement.

(c) provisional payment non-payment rules: no payments to prisoners, deported/removed individuals, and aliens outside the U.S.

(d) provisional payments will not be made after the earliest of the following months:

- (1) the month SSA sends notice of a reinstatement determination,
- (2) the month the beneficiary performs SGA,
- (3) the month before the beneficiary attains full retirement age,
- (4) the fifth month following the month reinstatement was requested.

(e) the beneficiary is not entitled to provisional benefits if:
(1) prior to starting to make provisional payments SSA determines that the beneficiary is not entitled to reinstatement,
(2) statements made in the reinstatement application are false,

(f) provisional benefit determinations are NOT initial determinations and are NOT subject to appeal; reinstatement determinations are still subject to appeal.

(g) SSA will NOT recover earlier overpayments from provisional benefits without the beneficiary's permission.

(h) after payment of provisional benefits, should SSA determine that the individual is not entitled to reinstatement, the provisional benefits will NOT be assessed as an overpayment and are not subject to recoupment unless fraud is involved. If SSA inadvertently makes provisional payments to an individual already reinstated, that provisional payment will be subject to overpayment and recoupment.

20 CFR 404.1592f – How do we determine reinstated benefits?

(a) SSA will reinstate benefits with the earliest month, in the prior 12 month period, that ends with the month before the beneficiary filed the reinstatement request and all requirements are met. Otherwise, benefits will be reinstated beginning the month in which the request was filed.

(b) when benefits are reinstated, Medicare is also reinstated.

(c) calculation of reinstated benefits levels.

(d) no reinstatement benefits are payable in any month in which the individual performs SGA. During the initial 24-month reinstatement period TWP and EPE do not apply. The initial 24-month reinstatement period begins the month of the first payment and ends after the 24th cash payment has been made. Unsuccessful work attempts and averaging will not apply during this period.

(e) after the 24th cash payment has been made further work efforts will be evaluated using the trial work period and EPE.

(f) When entitlement to reinstatement ends.

(h) if SSA determines that the beneficiary is not entitled to reinstatement, the EXR application will be considered an intent to file a new application and will act as a protective filing date.

SSI PROVISIONS

20 CFR 416.999 – What is expedited reinstatement?

See SSDI discussion. Provision is the same as that found in 404.1592b.

20 CFR 416.999a – Who is eligible for expedited reinstatement?

See SSDI discussion. Provision is the same with the exception that in the SSI system benefits are payable to the beneficiary only. There are no auxiliary benefits payable under the SSI program.

20 CFR 416.999b – How do I request reinstatement?

Provision is substantially identical to SSDI provision of 20 CFR 404.1592d.

20 CFR 416.999c – How do we determine provisional benefits?

(a) the beneficiary may receive up to 6 consecutive months of provisional benefits and Medicaid while SSA determines eligibility for reinstatement.

(1) SSA will pay the beneficiary provisional benefits beginning the month following the request for reinstatement.

(2) if there is an eligible spouse, the eligible spouse will also receive provisional benefits.

(3) benefits will be paid in an amount equal to that payable in your state using the general SSI payment method.

(4) if there is not eligible spouse, the beneficiary will be paid according to the standard SSI payment procedures in your state.

(5) Provisional benefits will NOT include state supplement payments.

- (b) the beneficiary cannot receive provisional payments or Medicaid if:
 - (1) a request has been made,
 - (2) the beneficiary has previously received provisional cash or Medicaid based on a prior request for reinstatement, and
 - (3) the request is based upon the same previous period of disability eligibility.

(c) – (h) See SSDI provisions of 20 CFR 404.1592e. The provisions are identical.

20 CFR 416.999d – How do we determine reinstated benefits?

(a) SSA cannot reinstate eligibility prior to February, 2001.

(c) once a beneficiary has been reinstated, reinstatement is not available again until after the 24-month reinstatement period is complete. This period will end once the beneficiary has received 24 monthly cash payment. If SSI benefits are adjusted to recoup an overpayment or due to the payment of provisional benefits in the same month, the benefits will be considered paid for that month for purposes of meeting the 24 monthly payment criteria.

(d) Termination of reinstatement benefits.

20 CFR 416.1403 – Administrative actions that are not initial determinations.

(a)(19) determining whether SSA will refer an overpayment to the Department of Treasury for collection by federal benefits offset.

(20) determining whether SSA will order your employer to garnish wages to collect and overpayment.

(21) determining whether provisional benefits are payable.