

## § 410.472

not be determinative of the question of whether or not an individual is under a disability. However, all statements and other evidence (including statements of the miner's physician) shall be considered in adjudicating a claim. In considering statements of the miner's physician, appropriate account shall be taken of the length of time he treated the miner.

### § 410.472 Consultative examinations.

Upon reasonable notice of the time and place thereof, any individual filing a claim alleging to be totally disabled due to pneumoconiosis shall present himself for and submit to reasonable physical examinations or tests, at the expense of the Administration, by a physician or other professional or technical source designated by the Administration or the State agency authorized to make determinations as to disability. If any such individual fails or refuses to present himself for any examination or test, such failure or refusal, unless the Administration determines that there is good cause therefor, may be a basis for determining that such individual is not totally disabled. Religious or personal scruples against medical examination or test shall not excuse an individual from presenting himself for a medical examination or test. Any claimant may request that such test be performed by a physician or other professional or technical source of his choice, the reasonable expense of which shall be borne by the Administration (see § 410.240(h)). However, granting such request does not preclude the Administration from requiring that additional or supplemental tests be conducted by a physician or other professional or technical source designated by the Administration.

### § 410.473 Evidence of continuation of disability.

An individual who has been determined to be totally disabled due to pneumoconiosis, upon reasonable notice, shall, if requested to do so (e.g., where there is an issue about the validity of the original adjudication of disability) present himself for and submit to examinations or tests as provided in § 410.472, and shall submit medical re-

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ports and other evidence necessary for the purposes of determining whether such individual continues to be under a disability.

### § 410.474 Place and manner of submitting evidence.

Evidence in support of a claim for benefits based on disability shall be filed in the manner and at the place or places prescribed in subpart B of this part, or where appropriate, at the office of a State agency authorized under agreement with the Commissioner to make determinations as to disability under title II of the Social Security Act, or with an employee of such State agency authorized to accept such evidence at a place other than such office.

[37 FR 20641, Sept. 30, 1972, as amended at 62 FR 38453, July 18, 1997]

### § 410.475 Failure to submit evidence.

An individual shall not be determined to be totally disabled unless he furnishes such medical and other evidence thereof as is reasonably required to establish his claim. Religious or personal scruples against medical examinations, tests, or treatment shall not excuse an individual from submitting evidence of disability.

### § 410.476 Responsibility to give notice of event which may affect a change in disability status.

An individual who is determined to be totally disabled due to pneumoconiosis shall notify the Administration promptly if:

- (a) His respiratory or pulmonary condition improves; or
- (b) He engages in any gainful work or there is an increase in the amount of such work or his earnings therefrom.

### § 410.490 Interim adjudicatory rules for certain part B claims filed by a miner before July 1, 1973, or by a survivor where the miner died before January 1, 1974.

(a) *Basis for rules.* In enacting the Black Lung Act of 1972, the Congress noted that adjudication of the large backlog of claims generated by the earlier law could not await the establishment of facilities and development of medical tests not presently available

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to evaluate disability due to pneumoconiosis, and that such claims must be handled under present circumstances in the light of limited medical resources and techniques. Accordingly, the Congress stated its expectancy that the Commissioner would adopt such interim evidentiary rules and disability evaluation criteria as would permit prompt and vigorous processing of the large backlog of claims consistent with the language and intent of the 1972 amendments and that such rules and criteria would give full consideration to the combined employment handicap of disease and age and provide for the adjudication of claims on the basis of medical evidence other than physical performance tests when it is not feasible to provide such tests. The provisions of this section establish such interim evidentiary rules and criteria. They take full account of the congressional expectation that in many instances it is not feasible to require extensive pulmonary function testing to measure the total extent of an individual's breathing impairment, and that an impairment in the transfer of oxygen from the lung alveoli to cellular level can exist in an individual even though his chest roentgenogram (X-ray) or ventilatory function tests are normal.

(b) *Interim presumption.* With respect to a miner who files a claim for benefits before July 1, 1973, and with respect to a survivor of a miner who dies before January 1, 1974, when such survivor timely files a claim for benefits, such miner will be presumed to be totally disabled due to pneumoconiosis, or to have been totally disabled due to pneumoconiosis at the time of his death, or his death will be presumed to be due to pneumoconiosis, as the case may be, if:

(1) One of the following medical requirements is met:

(i) A chest roentgenogram (X-ray), biopsy, or autopsy establishes the existence of pneumoconiosis (see § 410.428); or

(ii) In the case of a miner employed for at least 15 years in underground or comparable coal mine employment, ventilatory studies establish the presence of a chronic respiratory or pulmonary disease (which meets the re-

quirements for duration in § 410.412(a)(2)) as demonstrated by values which are equal to or less than the values specified in the following table:

	Equal to or less than—	
	FEV <sub>1</sub>	MVV
67" or less .....	2.3	92
68" .....	2.4	96
69" .....	2.4	96
70" .....	2.5	100
71" .....	2.6	104
72" .....	2.6	104
73" or more .....	2.7	108

(2) The impairment established in accordance with paragraph (b)(1) of this section arose out of coal mine employment (see §§ 410.416 and 410.456).

(3) With respect to a miner who meets the medical requirements in paragraph (b)(1)(ii) of this section, he will be presumed to be totally disabled due to pneumoconiosis arising out of coal mine employment, or to have been totally disabled at the time of his death due to pneumoconiosis arising out of such employment, or his death will be presumed to be due to pneumoconiosis arising out of such employment, as the case may be, if he has at least 10 years of the requisite coal mine employment.

(c) *Rebuttal of presumption.* The presumption in paragraph (b) of this section may be rebutted if:

(1) There is evidence that the individual is, in fact, doing his usual coal mine work or comparable and gainful work (see § 410.412(a)(1)), or

(2) Other evidence, including physical performance tests (where such tests are available and their administration is not contraindicated), establish that the individual is able to do his usual coal mine work or comparable and gainful work (see § 410.412(a)(1)).

(d) *Application of presumption on readjudication.* Any claim initially adjudicated under the rules in this section will, if the claim is for any reason thereafter readjudicated, be readjudicated under the same rules.

(e) *Failure of miner to qualify under presumption in paragraph (b) of this section.* Where it is not established on the basis of the presumption in paragraph (b) of this section that a miner is (or was) totally disabled due to pneumoconiosis, or was totally disabled due to

pneumoconiosis at the time of his death, or that his death was due to pneumoconiosis, the claimant may nevertheless establish the requisite disability or cause of death of the miner under the rules set out in §§410.412 to 410.462.

[37 FR 20641, Sept. 30, 1972, as amended at 62 FR 38453, July 18, 1997]

APPENDIX TO SUBPART D OF PART 410

A miner with pneumoconiosis who meets or met one of the following sets of medical specifications, may be found to be totally disabled due to pneumoconiosis at the pertinent time, in the absence of evidence rebutting such finding:

(1) Arterial oxygen tension at rest (sitting or standing) or during exercise and simultaneously determined arterial PCO<sub>2</sub> equal to, or less than, the values specified in the following table:

Arterial PCO <sub>2</sub> (mm. Hg)	Arterial PO <sub>2</sub> equal to or less than (mm. Hg)
30 or below .....	65
31 .....	64
32 .....	63
33 .....	62
34 .....	61
35 .....	60
36 .....	59
37 .....	58
38 .....	57
39 .....	56
40 or above .....	55

or

(2) Cor pulmonale with right-sided congestive failure as evidenced by peripheral edema and liver enlargement, with:

(A) Right ventricular enlargement or out-flow tract prominence on X-ray or fluoroscopy; or

(B) ECG showing QRS duration less than 0.12 second and R of 5 mm. or more in V<sub>1</sub> and R/S of 1.0 or more in V<sub>1</sub> and transition zone (decreasing R/S) left of V<sub>1</sub>;

or

(3) Congestive heart failure with signs of vascular congestion such as hepatomegaly or peripheral or pulmonary edema, with:

(A) Cardio-thoracic ratio of 55 percent or greater, or equivalent enlargement of the transverse diameter of the heart, as shown on teleroentgenogram (6-foot film); or

(B) Extension of the cardiac shadow (left ventricle) to the vertebral column on lateral chest roentgenogram and total of S in V<sub>1</sub> or V<sub>2</sub> and R in V<sub>5</sub> or V<sub>6</sub> of 35 mm. or more on ECG.

Subpart E—Payment of Benefits

AUTHORITY: Sec. 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5)), secs. 411(a), 412 (a) and (b), 413(b), 426(a), and 508, 83 Stat. 793; 30 U.S.C. 921(a), 922 (a) and (b), 923(b), 936(a), and 957; sec. 410.565 also issued under sec. 3, 80 Stat. 309, 31 U.S.C. 952, unless otherwise noted.

SOURCE: 36 FR 23758, Dec. 14, 1971, unless otherwise noted.

§410.501 Payment periods.

Benefits are paid to beneficiaries during entitlement for payment periods consisting of full calendar months.

§410.505 Payees.

(a) *General.* Benefits may be paid as appropriate, to a beneficiary (see §410.110(r)), to a qualified dependent (see §410.511), or to a representative payee on behalf of a beneficiary or dependent (see §410.581ff). Also where an amount is payable under part B of title IV of the Act for any month to two or more individuals who are members of the same family, the Social Security Administration may, in its discretion, certify to any two or more of such individuals joint payment of the total benefits payable to them for such month.

(b) *Joint payee dies before cashing check.* Where a check has been issued for joint payment to an individual and spouse residing in the same household and one of them dies before the check is cashed, the Social Security Administration may give the survivor permission to cash the check. The permission is carried out by stamping the face of the check. An official of the Social Security Administration or the Treasury Disbursing Office must sign and name the survivor as the payee of the check (see 31 CFR 360.8). Where the uncashed check is for benefits for a month after the month of death, authority to cash the check will not be given to the surviving payee unless the funds are needed to meet the ordinary and necessary living expenses of the surviving payee.

(c) *Adjustment or recovery of overpayment.* Where a check representing payment of benefits to an individual and spouse residing in the same household is negotiated by the surviving payee in accordance with the authorization in paragraph (b) of this section and where