

Social Security Administration

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(7) A statement showing that the representative sent a copy of the request for approval of a fee to you.

(b) *Evaluating a request for approval of a fee.* (1) When we evaluate a representative's request for approval of a fee, we consider the purpose of the supplemental security income program, which is to assure a minimum level of income for the beneficiaries of the program, together with—

(i) The extent and type of services the representative performed;

(ii) The complexity of the case;

(iii) The level of skill and competence required of the representative in giving the services;

(iv) The amount of time the representative spent on the case;

(v) The results the representative achieved;

(vi) The level of review to which the claim was taken and the level of the review at which the representative became your representative; and

(vii) The amount of fee the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expenses he or she incurred.

(2) Although we consider the amount of benefits, if any, that are payable, we do not base the amount of fee we authorize on the amount of the benefit alone, but on a consideration of all the factors listed in this section. The benefits payable in any claim are determined by specific provisions of law and are unrelated to the efforts of the representative. We may authorize a fee even if no benefits are payable.

§ 416.1528 Proceedings before a State or Federal court.

We shall not consider any service the representative gave you in any proceeding before a State or Federal court to be services as a representative in dealings with us. However, if the representative has also given service to you in the same connection in any dealings with us, he or she must specify what, if any, portion of the fee he or she wants to charge is for services performed in dealings with us. If the representative charges any fee for those services, he or she must file the request

and furnish all of the information required by § 416.1525.

§ 416.1535 Services in a proceeding under title XVI of the Act.

Services provided a claimant in any dealing with us under title XVI of the Act consist of services performed for that claimant in connection with any claim he or she may have before the SSA under title XVI of the Act. These services include any in connection with any asserted right a claimant may have calling for an initial or reconsidered determination by us, and a decision or action by an administrative law judge or by the Appeals Council.

[45 FR 52106, Aug. 5, 1980, as amended at 62 FR 38455, July 18, 1997]

§ 416.1540 Rules of conduct and standards of responsibility for representatives.

(a) *Purpose and scope.* (1) All attorneys or other persons acting on behalf of a party seeking a statutory right or benefit shall, in their dealings with us, faithfully execute their duties as agents and fiduciaries of a party. A representative shall provide competent assistance to the claimant and recognize the authority of the Agency to lawfully administer the process. The following provisions set forth certain affirmative duties and prohibited actions which shall govern the relationship between the representative and the Agency, including matters involving our administrative procedures and fee collections.

(2) All representatives shall be forthright in their dealings with us and with the claimant and shall comport themselves with due regard for the non-adversarial nature of the proceedings by complying with our rules and standards, which are intended to ensure orderly and fair presentation of evidence and argument.

(b) *Affirmative duties.* A representative shall, in conformity with the regulations setting forth our existing duties and responsibilities and those of claimants (see § 416.912 in disability and blindness claims):

(1) Act with reasonable promptness to obtain the information and evidence that the claimant wants to submit in

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support of his or her claim, and forward the same to us for consideration as soon as practicable. In disability and blindness claims, this includes the obligations to assist the claimant in bringing to our attention everything that shows that the claimant is disabled or blind, and to assist the claimant in furnishing medical evidence that the claimant intends to personally provide and other evidence that we can use to reach conclusions about the claimant's medical impairment(s) and, if material to the determination of whether the claimant is blind or disabled, its effect upon the claimant's ability to work on a sustained basis, pursuant to §416.912(a);

(2) Assist the claimant in complying, as soon as practicable, with our requests for information or evidence at any stage of the administrative decisionmaking process in his or her claim. In disability and blindness claims, this includes the obligation pursuant to §416.912(c) to assist the claimant in providing, upon our request, evidence about:

- (i) The claimant's age;
- (ii) The claimant's education and training;
- (iii) The claimant's work experience;
- (iv) The claimant's daily activities both before and after the date the claimant alleges that he or she became disabled;
- (v) The claimant's efforts to work; and
- (vi) Any other factors showing how the claimant's impairment(s) affects his or her ability to work, or, if the claimant is a child, his or her functioning. In §§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors; and

(3) Conduct his or her dealings in a manner that furthers the efficient, fair and orderly conduct of the administrative decisionmaking process, including duties to:

- (i) Provide competent representation to a claimant. Competent representation requires the knowledge, skill, thoroughness and preparation reasonably necessary for the representation. This includes knowing the significant issue(s) in a claim and having a working knowledge of the applicable provi-

sions of the Social Security Act, as amended, the regulations and the Rulings; and

(ii) Act with reasonable diligence and promptness in representing a claimant. This includes providing prompt and responsive answers to requests from the Agency for information pertinent to processing of the claim.

(c) *Prohibited actions.* A representative shall not:

(1) In any manner or by any means threaten, coerce, intimidate, deceive or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the Act;

(2) Knowingly charge, collect or retain, or make any arrangement to charge, collect or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation;

(3) Knowingly make or present, or participate in the making or presentation of, false or misleading oral or written statements, assertions or representations about a material fact or law concerning a matter within our jurisdiction;

(4) Through his or her own actions or omissions, unreasonably delay or cause to be delayed, without good cause (see §416.1411(b)), the processing of a claim at any stage of the administrative decisionmaking process;

(5) Divulge, without the claimant's consent, except as may be authorized by regulations prescribed by us or as otherwise provided by Federal law, any information we furnish or disclose about a claim or prospective claim;

(6) Attempt to influence, directly or indirectly, the outcome of a decision, determination or other administrative action by offering or granting a loan, gift, entertainment or anything of value to a presiding official, Agency employee or witness who is or may reasonably be expected to be involved in the administrative decisionmaking process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence; or

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(7) Engage in actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings, including but not limited to:

(i) Repeated absences from or persistent tardiness at scheduled proceedings without good cause (see § 416.1411(b));

(ii) Willful behavior which has the effect of improperly disrupting proceedings or obstructing the adjudicative process; and

(iii) Threatening or intimidating language, gestures or actions directed at a presiding official, witness or Agency employee which results in a disruption of the orderly presentation and reception of evidence.

[63 FR 41417, Aug. 4, 1998]

§ 416.1545 Violations of our requirements, rules, or standards.

When we have evidence that a representative fails to meet our qualification requirements or has violated the rules governing dealings with us, we may begin proceedings to suspend or disqualify that individual from acting in a representational capacity before us. We may file charges seeking such sanctions when we have evidence that a representative:

(a) Does not meet the qualifying requirements described in § 416.1505;

(b) Has violated the affirmative duties or engaged in the prohibited actions set forth in § 416.1540; or

(c) Has been convicted of a violation under section 1631(d) of the Act.

[63 FR 41418, Aug. 4, 1998]

§ 416.1550 Notice of charges against a representative.

(a) The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

(b) We will send this notice to the representative either by certified or registered mail, to his or her last known address, or by personal delivery.

(c) We will advise the representative to file an answer, within 30 days from the date of the notice or from the date

the notice was delivered personally, stating why he or she should not be suspended or disqualified from acting as a representative in dealings with us.

(d) The Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, may extend the 30-day period for good cause.

(e) The representative must—

(1) Answer the notice in writing under oath (or affirmation); and

(2) File the answer with the Social Security Administration, Office of Hearings and Appeals, Attention: Special Counsel Staff, within the 30-day time period.

(f) If the representative does not file an answer within the 30-day time period, he or she does not have the right to present evidence, except as may be provided in § 416.1565(g).

[45 FR 52106, Aug. 5, 1980, as amended at 56 FR 24132, May 29, 1991; 62 FR 38455, July 18, 1997; 63 FR 41418, Aug. 4, 1998]

§ 416.1555 Withdrawing charges against a representative.

We may withdraw charges against a representative. We will do this if the representative files an answer, or we obtain evidence, that satisfies us that there is reasonable doubt about whether he or she should be suspended or disqualified from acting as a representative in dealings with us. If we withdraw the charges, we shall notify the representative by mail at his or her last known address.

§ 416.1565 Hearing on charges.

(a) *Scheduling the hearing.* If the Deputy Commissioner for Disability and Income Security Programs (or other official the Commissioner may designate), or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

(b) *Hearing officer.* (1) The Associate Commissioner for Hearings and Appeals, or his or her designee, shall assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.