If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 93.802, Social Security—Disability Insurance; 93.803, Social Security— Retirement Insurance; 93.805, Social Security—Survivors Insurance; 93.806, Special Benefits for Disabled Coal Miners; 93.807, Supplemental Security Income.)

Dated: April 18, 1995.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling

Title II and Title XVI: Finding Good Cause for Missing the Deadline to Request Administrative Review due to Statements in the Notice of Initial or Reconsideration Determination Concerning the Right to Request Administrative Review and the Option to File a New Application

Purpose

To reflect the Social Security
Administration's (SSA) policy on
establishing good cause for late filing of
a request for administrative review as it
applies to a claimant who received an
initial or reconsideration determination
notice dated prior to July 1, 1991, which
did not state that filing a new
application instead of a request for
administrative review could result in
the loss of benefits.

Citations (Authority)

Sections 205(b) and 1631(c)(1) of the Social Security Act (the Act); Regulation No. 4, sections 404.903(j), 404.909, 404.911, 404.933, 404.957(c)(3); and Regulation No. 16, sections 416.1403(a)(8), 416.1409, 416.1411, 416.1433, 416.1457(c)(3).

Pertinent History

Our rules in 20 CFR sections 404.909(a), 404.933(b), 416.1409(a), and 416.1433(b) provide that a request for reconsideration and a request for hearing before an administrative law judge (ALJ) must be filed within 60 days after the date of receipt by the claimant of the notice of the determination being appealed. However, the regulations also provide that a claimant can request that the 60-day time period for filing a request for review be extended if the claimant can show good cause for missing the deadline. The request for an extension of time must be in writing and must give the reason why the request for review was not filed timely.

When the claimant fails to timely request reconsideration or an ALJ hearing, the Agency applies the criteria in section 404.911 or section 416.1411,

as appropriate, in determining whether good cause for missing the deadline exists.

Section 404.911(a) states:

In determining whether you have shown that you had good cause for missing a deadline to request review we consider—

- (1) What circumstances kept you from making the request on time;
 - aking the request on time; (2) Whether our action misled you;
- (3) Whether you did not understand the requirements of the Act resulting from amendments to the Act, other legislation, or court decisions; and
- (4) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from filing a timely request or from understanding or knowing about the need to file a timely request for review.

Section 416.1411(a) sets out essentially the same criteria.

If the Agency determines that good cause for the claimant missing the deadline to request review exists, we process the request for review in accordance with established procedures and the prior administrative action is not final or binding for purposes of applying the rules on either *res judicata* or administrative finality.

Many SSA initial and reconsideration determination notices denying claims for Social Security benefits based on disability issued from September 1, 1977, through February 28, 1990, stated that, if the claimant did not seek administrative review within the 60-day time period, he or she still had the right to file another application at any time. The notices did not further state that filing a new application instead of a request for administrative review could result in the loss of benefits. Some claimants have alleged that they have failed to file a timely request for administrative review as a result of these notices.

In 1984, SSA began making revisions to its notices to explain more clearly the difference between seeking administrative review and filing a new application. Language was added to the initial determination notice stating that a new application is not the same as an appeal of the determination. In 1989 SSA began adding this language to the reconsideration determination notice along with an explanation on both notices to specifically advise the claimant that failing to seek administrative review could result in a loss of benefits. SSA completed implementation of this revision to the notices in February 1990.

SSA has further revised its notices as a result of section 5107 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508. This section amended the Act to provide that a failure to timely request administrative review of an initial or reconsideration determination made on or after July 1, 1991, may not be used to deny or dismiss a subsequent claim for benefits on the basis of res judicata if the claimant demonstrates that he or she failed to request administrative review of the determination acting in good faith reliance upon incorrect, incomplete or misleading information, relating to the consequences of reapplying for benefits in lieu of seeking review of the determination and the information was provided by an officer or employee of SSA or a State agency making disability determinations under section 221 of the

Policy Interpretation

SSA will make a finding of good cause for late filing of a request for administrative review for a title II, title XVI, or concurrent title II/title XVI claim if a claimant received a notice covered by this Ruling and demonstrates that, as a result of the notice, he or she did not timely request such review. The mere receipt of a notice covered by this Ruling will not, by itself, establish good cause.

A. Notices Covered by This Ruling

A notice is covered by this Ruling if it advised the claimant that if he or she did not request administrative review, he or she still had the right to file a new application at any time without further explaining that filing a new application instead of a request for administrative review could result in the loss of benefits. The following are notices covered by this Ruling, if the notice did not state that filing a new application instead of a request for review could result in the loss of benefits.

1. Initial Determination Notice Containing The Following Sentence:

"If you do not request reconsideration of your case within the prescribed time period, you still have the right to file another application at any time."

2. Reconsideration Determination Notice Containing The Following Sentence:

"If you do not request a hearing of your case within the prescribed time period, you still have the right to file another application at any time."

A notice described above is not excluded from the Ruling simply because it contained the following additional sentence: