

indeed certain fundamentals are always followed by prudent investors.¹

The financial marketplace offers investors many different strategies. Some of these strategies would satisfy the prudent investor standard; others would not. Neither we nor the Commission can anticipate each possible strategy or investment option and decide whether it is prudent. But, a failure to invest in accordance with widely-held and time-honored practices may be irresponsible, if not imprudent. In that regard, we believe implementation of the following two strategies is, in broad terms, required of all investment management fiduciaries.

First, as the time nears when fund assets will be spent on decommissioning work, assets should be phased out of equity investments and into less volatile and more conservative investments. Many commenters endorsed this principle.² Similarly, Maine Yankee Atomic Company attached to its comments a financial advisor's report recommending a five-year phase out of equity investments just before the fund assets would be spent on decommissioning work. Today's order acknowledges the validity of this principle.³ While nuclear plant owners may choose different decommissioning strategies and thus have different timelines for spending fund assets, an appropriately-timed equity phase-out would always appear to be prudent.

Second, just as a prudent investor would invest little or no part of its portfolio in penny stocks and junk bonds, a prudent investor would limit the extent of its investments in derivatives. Derivatives may serve a useful role in offsetting the risk of other investments. For example, if a portfolio contains government or corporate bonds, perhaps the sensitivity of these bonds to interest rate fluctuations could be offset by hedging in derivatives. A prudent investor would, in our view, limit investments in derivatives, if any, solely to such risk-reducing uses.

With these additional thoughts, we concur in today's order.

James J. Hoecker,
Commissioner.

William L. Massey,
Commissioner.

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960-AE10

Administrative Review Process, Prehearing Proceedings and Decisions by Attorney Advisors

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are adding new rules which modify, on a temporary basis, the prehearing procedures we follow in claims for Social Security or Supplemental Security Income (SSI) benefits based on disability. Under the final rules, attorney advisors in our Office of Hearings and Appeals (OHA) have the authority to conduct certain prehearing proceedings, and where the documentary record developed as a result of these proceedings warrants, to issue decisions that are wholly favorable to the parties to the hearing. Because requests for an administrative law judge (ALJ) hearing have increased dramatically in recent years, and cases pending in our hearing offices have reached unprecedented levels, we have taken a number of actions designed to help us decide these cases more efficiently. These final rules are an important part of our efforts in this regard.

EFFECTIVE DATE: June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Social Security Boulevard, Baltimore, Maryland 21235, (410) 965-6243.

SUPPLEMENTARY INFORMATION:

Background

The Social Security Administration (SSA) decides claims for Social Security benefits under title II of the Social Security Act (the Act) and for SSI benefits under title XVI of the Act in an administrative review process that generally consists of four steps. Claimants who are not satisfied with the initial determination we make on a claim may request reconsideration. Claimants who are not satisfied with our reconsidered determination may request a hearing before an ALJ, and claimants who are dissatisfied with an ALJ's decision may request review by the Appeals Council. Claimants who have completed these steps, and who are not satisfied with our final decision, may request judicial review of the decision in the Federal courts.

Generally, when a claim is filed for Social Security or SSI benefits based on

disability, a State agency makes the initial and reconsideration disability determination for us. A hearing conducted after we have made a reconsideration determination is held by an ALJ in one of the 132 hearing offices we have nationwide.

Applications for Social Security and SSI benefits based on disability have risen dramatically in recent years. The number of new disability claims SSA received in Fiscal Year (FY) 1994—3.56 million—represented a 40 percent increase over the number received in FY 1990. Requests for an ALJ hearing also have increased dramatically. In FY 1994, our hearing offices had almost 540,000 hearing receipts and the overwhelming majority of these were related to requests for a hearing filed by persons claiming disability benefits. In that year, the number of hearing receipts we received exceeded the number of receipts we received in FY 1990 by more than 70 percent. We expect hearing receipts to increase to more than 590,000 in FY 1995.

Despite management initiatives that resulted in a record increase in ALJ productivity in FY 1994, and the hiring of more than 200 new ALJs and more than 650 new support staff in that year, the number of cases pending in our hearing offices has reached unprecedented levels—more than 480,000 at the end of FY 1994 and more than 540,000 at the end of May 1995.

On September 19, 1994, the Commissioner of Social Security published a *Plan for a New Disability Claim Process* in the **Federal Register** (59 FR 47887). That document sets forth our long term plans for redesigning and fundamentally improving the overall disability claim process. On a separate track from that longer term plan, we have developed a number of short term initiatives to process cases more efficiently and, therefore, to reduce the number of cases pending in our hearing offices. As part of our short term disability process improvements, we are issuing these final regulations that make a temporary change in our administrative review procedures.

Under these final rules, attorney advisors will conduct certain prehearing proceedings and, where appropriate, issue decisions that are wholly favorable to the claimant and any other party to the hearing. These procedures will remain in effect for a period of time not to exceed two years from the effective date of these final rules unless they are extended by the Commissioner of Social Security by publication of a final rule in the **Federal Register**.

¹ See, e.g., Order, slip op. at 65 n.175 and accompanying text.

² See *Id.*, at 65 n.177.

³ *Id.*, at 66.