

I-3-5-20. Consideration of Additional Evidence

Last Update: 3/25/14 (Transmittal I-3-64)

When a claimant or appointed representative submits additional evidence in association with a request for review, the Appeals Council (AC) must determine whether it is new, material, and relates to the period on or before the date of the administrative law judge (ALJ) decision. See Hearings, Appeals, and Litigation Law (HALLEX) manual I-3-3-6.

If the additional evidence meets these criteria, the AC will evaluate the entire record, including the additional evidence. The AC will grant the request for review if it finds the ALJ's action, findings, or conclusion is contrary to the weight of the evidence currently of record. See 20 CFR 404.970(b) and 416.1470(b).

NOTE 1: In Region 1, the Part 405 rules apply. See HALLEX I-3-3-6 B NOTE 2.

Prior to analyzing the record and preparing a recommended action for the AC, the analyst must determine whether the evidence is new and material, and relates to the period on or before the date of the ALJ decision. See HALLEX I-3-3-6.

If the analyst finds that any one of the three criteria is not present, the analyst does not consider the evidence when evaluating the record. If the review of the record, absent the additional evidence, suggests a denial of the request for review is appropriate, the analyst will follow the instructions in section A, as applicable.

However, if the analyst finds that all three criteria are present, the analyst will consider the evidence with the entire record. See HALLEX I-3-3-6. If the full review of the record, including the additional evidence, suggests a denial of the request for review is appropriate, the analyst will follow the instructions in section B.

NOTE 2: When the analyst does not recommend a denial, these instructions do not apply. Rather, the analyst will refer to the applicable HALLEX instructions for the recommended action.

A. Additional Evidence is Not New, Material, or Related to the Period at Issue

If the evidence is not new, material, or related to the period at issue, (see HALLEX I-3-3-6), the analyst will prepare a denial notice and, as applicable, will:

1. Fully address the evidence in the Appeals Review Processing System (ARPS) analysis.
 - Note the location of the evidence in the record if the evidence is duplicative.
 - Explain in the analysis if the evidence is not material or does not relate to the period at issue.

2. Not exhibit the evidence.
3. Associate a copy of the evidence in the appropriate section of the file, placing all medical evidence in the F section. The evidence must be clearly described in the metadata (e.g., complete the Note, Source, and Date To and From fields) and will be included in the certified administrative record if the case is appealed to Federal court.

NOTE: If electronically submitted evidence does not appear in the correct section, the analyst will move the evidence to the appropriate section and include a detailed description of the evidence in the metadata.

4. Include language in the denial notice specifically identifying the additional evidence (by source, date range, and number of pages) and stating, as applicable:
 - The AC did not consider it because the evidence was not new and/or material. When applicable, the analyst will identify the evidence as duplicate, but not exhibit the evidence.
 - The evidence does not relate to the period on or before the date of the ALJ decision, and the agency will use the date of the request for review as a protective filing date if the claimant files a new application within 6 months of the date of the AC denial notice in a title II claim or 60 days of the date of the AC denial notice in a title XVI claim.

NOTE 1: Protective filing language is especially critical in light of Social Security Ruling (SSR) 11-1p: Titles II and XVI: Procedures for Handling Requests to File Subsequent Applications for Disability Benefits. Under SSR 11-1p, the agency will not accept a new disability application if the claimant has a prior disability claim for the same title and benefit type pending at any level of administrative review, unless the prior claim is pending at the AC and the claimant has evidence of a new critical or disabling condition with an onset after the date of the hearing decision. See also Program Operations Manual System (POMS) DI 51501.

NOTE 2: When the claim is for title II benefits only and claimant's insured status has expired, the AC will provide protective filing for a new title II claim if the date last insured was within two years of the AC denial notice. This is necessary to account for any lag earnings. See POMS RS 01404.005.

5. Return the evidence. If the evidence was submitted electronically, or is available in an electronic claim(s) file, the AC will inform the claimant in the denial notice that he or she may request a copy of the evidence from the agency if another copy is needed. In all other situations, the AC must return the evidence by mail when the additional evidence does not relate to the period at issue. See 20 CFR 404.976(b) and 416.1476 (b).

In situations where the new evidence is offensive or detrimental to the claimant's health and was not submitted directly by the claimant, the

analyst must discuss the matter with the branch chief before taking any action to return the evidence.

B. Evidence is New and Material, and Relates to the Period at Issue

When evidence is new, material, and relates to the period at issue, but does not provide a basis for granting review under 20 CFR 404.970 and 416.1470, the analyst will:

- Prepare a denial notice.
- Include language in the denial notice specifically identifying the evidence (by source, date range, and number of pages) and explaining the evidence did not provide a basis for granting review under the "weight of the evidence" standard. See 20 CFR 404.970 and 416.1470; HALLEX I-3-3-6.
- Exhibit the evidence and prepare an exhibit list with the accompanying order.

NOTE 1: Paper files are exhibited in the same manner as electronic files. For example, if the AC adds an exhibit in the F section of a paper file that has existing exhibits 1F-14F, the new exhibit should be numbered 15F.

NOTE 2: In Region 1, the Part 405 rules apply (see HALLEX I-3-3-6 B NOTE 2) and the Appeals Council will not exhibit the evidence when it denies review.