



I-2-4-40. Administrative Res Judicata

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A. General

This section explains administrative res judicata as it applies to decisions under the Social Security Act (Act). When a prior determination or decision with respect to the same party, facts, and issue(s) has become administratively final, the doctrine of administrative res judicata may be used to dismiss a request for hearing (RH) entirely or to refuse to consider an issue(s) on a subsequent application arising from the same title of the Act. The purpose of administrative res judicata is to protect the Social Security Administration (SSA) from having to repeatedly consider a claim that has been finally decided. See POMS [GN 03101.160](#).

B. Application of Administrative Res Judicata

The regulations at [20 CFR 404.957\(c\)\(1\)](#) and [416.1457\(c\)\(1\)](#) provide that administrative res judicata exists when:

1. There has been a previous determination or decision under the same subpart with respect to the same party;
2. The previous determination or decision was based on the same facts and on the same issue(s); and
3. The previous determination or decision has become final by either administrative or judicial action.

The regulations allow an administrative law judge (ALJ) to dismiss an RH on the basis of administrative res judicata. Although such dismissal is discretionary, an ALJ should apply the doctrine of res judicata when the requisite conditions are met. It is possible to dismiss one or more issues on the basis of administrative res judicata and still render a decision on other issues.

C. When Administrative Res Judicata is Not Applicable

There are situations in which administrative res judicata does not apply. These situations arise when either there has been a change in issues (e.g., a specific section in the listing of impairments changed) or the prior determination is not administratively final (e.g., the claimant lacked mental competency to appeal the prior determination, or the claimant was provided with incorrect, incomplete, or misleading information about when and how to request administrative review).

D. Changes in Issues — Administrative Res Judicata Not Applicable

Examples of changes in issues that affect the applicability of administrative res judicata can be found in POMS [DI 27516.010](#). The following list illustrates common changes in issues when administrative res judicata is not applicable.

1. Mental impairment cases when the prior determination or decision was issued on or before August 28, 1985 (regardless of how long ago the prior determination or decision was issued or when insured status requirements were last met).
2. The prior adjudicator found that the claimant had multiple non-severe impairments, and the prior determination or decision was issued on or before November 30, 1984.
3. The prior adjudicator found that the claimant had a non-severe impairment, and the prior determination or decision was issued before December 24, 1985.
4. Evaluation of any (physical) Listing that has been revised so that the current Listing is less restrictive and the prior determination or decision was issued on or before January 6, 1986. See POMS [DI 27516.010F](#).
5. No prior determination or decision was ever made under the medical-vocational guidelines (grid rules) that became effective February 26, 1979, and the prior denial was based on the ability to perform other than past relevant work.
6. Evaluation of a claim involving a cardiovascular impairment and the prior final decision or determination was made prior to February 10, 1994.
7. Evaluation of a claim involving a respiratory impairment and the prior final decision or determination was made prior to October 7, 1993.
8. Evaluation of a claim involving an immune system impairment (e.g., human immunodeficiency virus infection, systemic

- lupus erythematosus, or systemic vasculitis) and the prior final decision or determination was made prior to July 2, 1993.
9. Evaluation of claims for widow's, widower's or surviving divorced spouse's insurance benefits based on disability where the prior final decision or determination was made prior to May 22, 1991.
 10. Evaluation of claims involving an intellectual disorder and the lowest I.Q. measurement was 70 and the prior final decision or determination was made prior to December 12, 1990.

E. Mental Competence — Prior Determination Not Administratively Final and Administrative Res Judicata Not Applicable

1. When an ALJ Addresses Mental Competence

An ALJ must address and resolve in the decision or dismissal the issue of whether a claimant lacked the mental competence to pursue the appeal when:

- The ALJ considers the application of administrative finality or administrative res judicata to a determination or decision made on a prior application;
- There is evidence that a claimant lacked the mental capacity to timely request review of an adverse determination, decision, dismissal, or review by a Federal district court; and
- The claimant had no one legally responsible for prosecuting the claim.

If the claimant satisfies the substantive criteria, the time limits in the reopening regulations do not apply. In that situation, regardless of how much time has passed since the prior administrative action, the claimant can establish good cause for extending the deadline to request review of that action. If the ALJ finds that good cause exists, he or she will extend the time for requesting review and take the action that would have been appropriate had the claimant filed a timely appeal. In that instance, administrative finality and administrative res judicata will not apply.

NOTE: [Social Security Ruling \(SSR\) 91-5p](#) contains a full discussion of the policy we apply in determining whether good cause exists in claims involving mental incapacity.

2. Fourth Circuit Rule

In the Fourth Circuit, an adjudicator may not decline to find good cause to reopen a final determination or decision on a prior claim without first providing the claimant a separate on-the-record evidentiary hearing and decision on whether mental incompetence prevented the claimant from understanding the procedures necessary to request administrative review at the time of the prior determination or decision. *Culbertson v. Secretary of HHS*, 859 F.2d 319 (4th Cir. 1988); *Young v. Bowen*, 858 F.2d 951 (4th Cir. 1988). These decisions are implemented by [Acquiescence Ruling \(AR\) 90-4\(4\)](#) as follows:

- If, after such hearing, the ALJ finds that the claimant was not mentally competent at the time of the final determination or decision on the prior claim, the ALJ must: 1) issue a separate decision on the mental competency issue, and 2) provide the claimant a full hearing and decision on all issues raised by the prior and current claims. The ALJ may not dismiss the RH on the basis of administrative res judicata.
- If, however, the ALJ finds that the claimant was mentally competent at the time of the final determination or decision on the prior claim, the ALJ must: 1) issue a separate decision on the mental competency issue, and 2) proceed with action on the RH in the usual manner. The ALJ may dismiss the RH on the basis of administrative res judicata if the conditions for administrative res judicata are met.

F. Incorrect, Incomplete, or Misleading Information — Exception to the Applicability of Administrative Res Judicata

The amendments to the Act made by Section 5107 of the Omnibus Budget Reconciliation Act of 1990 create an exception to the application of administrative res judicata. SSA may not use the previous determination as a basis for denial of the subsequent application when:

1. SSA makes an initial or reconsidered determination on an application for title II or title XVI benefits that is fully or partially unfavorable to an individual;
2. The determination is final;
3. The individual subsequently applies for benefits under the same title of the Act; and

4. SSA issued the previous initial or reconsideration determination before July 1, 1991, and this notice did not explain that filing a new application instead of requesting review could result in a loss of benefits; or SSA made the previous determination on or after July 1, 1991; and
 - a. The determination became final because the claimant or another person (who either was a party to the determination or could have been a party by showing in writing that his or her rights would have been adversely affected by the determination) failed to timely request review of the determination; and
 - b. The claimant demonstrates that he or she, or another person whose rights were affected, failed to request review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of choosing to reapply for benefits instead of requesting review of the determination, provided by —
 - The notice issued prior to July 1, 1991; or
 - An officer or employee of SSA; or
 - An officer or employee of a State agency performing the disability and blindness determination function under [20 CFR 404.1503\(a\)](#) or [416.903\(a\)](#).

Under these circumstances, the previous determination may not serve as a basis for dismissing a request for an ALJ hearing under [20 CFR 404.957\(c\)\(1\)](#) and [416.1457\(c\)\(1\)](#) if the effect of the dismissal is to deny the subsequent application for benefits. This applies whether the dismissal action results in dismissing the RH entirely or in refusing to consider one or more issues in the case.

[SSR 95-1p](#) contains additional discussion of this policy. See also POMS [DI 27516.010](#).

G. Administrative Res Judicata at the Initial or Reconsideration Level

If a claimant files a new application and SSA finds that administrative res judicata applies because the application involves the same law, issues, facts and person(s) as a previously adjudicated application, SSA will not issue an initial determination on the merits of the new application or provide the right to reconsideration on the merits. However, SSA will provide the claimant appeal rights (i.e., the right to request reconsideration or an ALJ hearing on the issue of whether administrative res judicata applies). See generally POMS [GN 03101.160](#) and [DI 27516.001](#).

If, at the initial or reconsideration levels, the adjudicator determines that administrative res judicata does not apply, the adjudicator will issue an initial determination on the merits of the new application and provide full appeal rights. See generally POMS [DI 27516.005](#).

H. Partial Dismissal of an RH

The ALJ may dismiss an RH with respect to one or more issues on the basis of administrative res judicata and still make or issue a decision on any remaining issues. In such a case, the ALJ will issue a decision that also dismisses the RH with respect to the previously adjudicated issues.

I. Rights of the Same Party — Substitute Parties

For administrative res judicata to apply, the claim must involve the rights of the same party. Generally, when a subsequent application is filed, it is filed by the same individual that filed the original application. However, when the original party dies and there is a substitute party, issues may arise in determining whether administrative res judicata applies.

1. If the substitute party is filing to receive an underpayment (all or part of the benefits the original party would have received had the claim been allowed), the rights of the same party are involved and the ALJ should dismiss the RH in its entirety.
2. If another individual has a claim for benefits on his or her own right regardless of whether he or she is a substitute party, administrative res judicata is applicable to an issue decided with respect to the original party.

Example: A wage earner filed a claim for retirement insurance benefits. The claim was denied because the wage earner did not meet the earnings requirements of the Act at or after the time he reached retirement age. No reconsideration was requested and the initial determination became final and binding. Subsequently, the wage earner died and the surviving widow filed a claim for widow's insurance benefits alleging that her deceased husband did meet the earnings requirements and that he was entitled to benefits. However, because the widow did not furnish any new and material evidence on the issue of her deceased husband's insured status, administrative res judicata should be applied to that issue. Thus, the widow would be entitled to a decision on the merits regarding her own claim, but in the decision, the ALJ should state that the issue of her husband's insured status is dismissed on the basis of administrative res judicata.

J. Same Material Facts — No New and Material Evidence

For administrative res judicata to apply to any particular issue, the same material facts must be involved, i.e., the prior claim represented the same material facts pertinent to the particular issue. The term “same material facts” means, in effect, that no new and material evidence has been submitted since the last adjudication on the prior claim. The ALJ will follow the procedures in HALLEX I-2-9-40 C to determine whether additional evidence is new and material. If, in connection with the current claim, the claimant submits evidence that meets the regulatory standard for new and material evidence, the facts are not the same and administrative res judicata would not apply.

NOTE: In order to evaluate whether evidence meets the regulatory standard for new and material evidence, the ALJ must know what evidence was used to make the prior decision. Accordingly, the ALJ may need to obtain the prior claim file in order to review that evidence.

1. In title II disability cases, administrative res judicata applies to the issue of disability when:
 1. The claimant's insured status expired before the date of the final determination or decision on the prior application; and
 2. The claimant has submitted no new and material evidence relating to the previously adjudicated period. See HALLEX I-2-9-40 C.
2. In title II cases, if the claimant continues to have insured status after the end of the previously adjudicated period, the unadjudicated period presents a new issue, and the claimant is entitled to a hearing on that new issue.
 - a. In the Notice of Hearing, include a statement to explain that in the absence of new and material evidence relating to the previously adjudicated period, administrative res judicata applies and the determination or decision on the prior application is final and binding on the issue of disability during the previously adjudicated period.
 - b. If there is no basis for reopening the final determination or decision on the prior application, the ALJ should issue a decision regarding the unadjudicated period based on the current application and include in the decision the following (or similar) findings which, in effect, dismiss the RH regarding the previously adjudicated period:
 - There is no new and material evidence (HALLEX I-2-9-40 C) or other basis for reopening the prior determination or decision.
 - The prior determination or decision is final and binding on the issue of disability during the previously adjudicated period.
 - The RH on the issue of disability during the previously adjudicated period is dismissed.
3. In a title XVI case involving disability, income or resources, the ALJ cannot dismiss a subsequent RH in its entirety because there is always an unadjudicated period. The ALJ should:
 - a. Dismiss the RH with respect to the issue of disability for any previously adjudicated period, and
 - b. Issue a decision on the merits for the unadjudicated period.

K. Effect of a Subsequent Change in Statute, Regulation, or Policy Interpretation on Applicability of Administrative Res Judicata

An ALJ may not use administrative res judicata as the basis for dismissing an RH based on a current application when there has been a change in a statute, regulation, ruling or legal precedent that was applied in reaching the final determination or decision on the prior application. A new adjudicative standard exists and the issues cannot be considered the same as the issues in the prior case. The ALJ must issue a decision.

Example 1:

On August 21, 2000, SSA published regulations that became effective on September 20, 2000 and established new medical criteria (listings) for adjudicating cases involving mental impairments. These regulations represented a change in how we determine the issue of whether or not a claimant is under a disability when a mental impairment is present. Therefore, an ALJ cannot apply the doctrine of administrative res judicata in a title II case involving a mental impairment on which a prior final determination or decision was issued before September 20, 2000, even if no new facts are presented and even if insured status expired before the date of the prior final determination or decision. The ALJ must apply the new regulations (i.e., the regulations effective September 20, 2000) and issue a decision on the merits of the case.

Example 2:

On November 19, 2001, SSA amended the musculoskeletal listings at sections 1.00 and 101.00 of the Listing of Impairments.

These changes became effective February 19, 2002. These regulations represented a change in how SSA evaluates certain musculoskeletal impairments. Therefore, an ALJ cannot apply the doctrine of administrative res judicata in a title II case involving a musculoskeletal impairment on which a prior final determination or decision was issued before February 19, 2002, even if no new facts are presented and even if insured status expired before the date of the prior final determination or decision. The ALJ must apply the new regulations (i.e., the regulations published on November 19, 2001) and issue a decision on the merits of the case.

NOTE 1: Although a change in the regulations precludes an ALJ from dismissing a RH on the basis of administrative res judicata, it does not change the rules on administrative finality. Payment of the claim would be based on the current application alone, unless the conditions for reopening an earlier claim are met.

NOTE 2: When there has been a change in the regulations, ALJs must apply the new regulations as if they always existed unless the new regulation specifically states otherwise. For example, the new regulations may state that they apply only to claims filed after a certain date.

NOTE 3: Refer to POMS [DI 27516.010](#) for dates of the current versions of the medical listings.

L. Dismissal of an RH in its Entirety

When dismissing an RH in its entirety on the basis of administrative res judicata, an ALJ must include in the Order of Dismissal the following:

1. The history of the prior application(s) and actions taken, including specific reference to the determination or decision that became final.
2. A paragraph stating that a determination or decision that has become final and binding may be reopened for good cause (within 4 years for a title II claim and 2 years for a title XVI claim) if:
 - a. New and material evidence is furnished,
 - b. A clerical error in the computation or recomputation of benefits was made for a claim under title II, or a clerical error was made for a claim under title XVI, or
 - c. The evidence considered in making the determination or decision clearly shows on its face that an error was made.
3. A list and description of any new evidence submitted in connection with the current application.
4. A paragraph that includes:
 - a. A statement as to why any new evidence is not material and does not warrant revision of the final determination or decision made on the prior application (i.e., the new evidence essentially duplicates prior evidence or refers to an impairment that did not exist at the time the claimant was last insured, etc.),
 - b. A statement that there was no clerical error or error on the face of the evidence supporting the prior determination or decision, and
 - c. A statement concluding that, in view of the above, the final determination or decision made on the application of (provide date) may not be reopened.
5. A paragraph stating that an ALJ may dismiss a RH if all three of the following conditions exist:
 - a. There has been a previous determination or decision with respect to the rights of the same party,
 - b. The previous determination or decision was based on the same facts and on the same issue(s), and
 - c. The previous determination or decision has become final by either administrative or judicial action.

M. When a Hearing Is Needed to Determine Whether There is New and Material Evidence

An ALJ may schedule a limited hearing if there is indication that testimony from the claimant, the treating physician, or some other witness might constitute new and material evidence under [HALLEX I-2-9-40 C](#). In this situation, the following procedures apply:

1. Include the following in the Notice of Hearing:
 - a. A reference to the prior application,
 - b. A statement that a hearing will be held to ascertain whether additional testimony will warrant revision of the prior determination or decision, and
 - c. A statement that if the additional testimony does not warrant revision of the prior determination or decision, the current RH will be dismissed on the basis of administrative res judicata.

2. If, after the hearing, the ALJ finds that there is no new and material evidence (as defined in HALLEX I-2-9-40 C) or another basis for reopening the prior determination or decision, the ALJ should dismiss the request for a hearing and include in the dismissal order a discussion of the testimony at the hearing and the ALJ's rationale.



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