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

Last Update: 5/1/17 (Transmittal I-3-155)

A. General

Generally, the Appeals Council (AC) will only consider additional evidence as a basis for granting review if the claimant shows good cause for not submitting the evidence to the Social Security Administration (SSA) previously; the additional evidence is new, material, and relates to the period at issue; and there is a reasonable probability that the additional evidence will change the outcome of the decision (see Hearings, Appeals and Litigation Law (HALLEX) manual I-3-3-6).

However, when the AC evaluates a decision that is not based on an application for benefits and involves title XVI of the Social Security Act (the Act) (e.g., age 18 redeterminations, continuing disability reviews (CDRs), or terminations), the AC considers the evidence in the hearing record and any additional evidence it believes is material to an issue being considered. See 20 CFR 416.1470(b).

B. Evaluating the Record

1. Title XVI Claims Based on an Application and Title II Claims

The rules that limit the AC's consideration of additional evidence, 20 CFR 404.970(b) and 416.1470(b), apply to:

- Title II claims based on an application filed after June 30, 1980;
- Title XVI claims based on an application filed after April 30, 1986; or
- Title II claims not based on an application (e.g., cessation or termination cases), effective with requests for review filed on or after February 9, 1987.

If the AC finds that the claimant does not meet one of the good cause exceptions set forth in 20 CFR 404.970(b) and 416.1470(b), or the additional evidence is not new, material, and related to the period at issue, or the additional evidence does not show a reasonable probability that it will change the outcome of the decision, the AC will not consider the additional evidence when evaluating the record. The analyst will review the record, absent the additional evidence, to determine whether the record provides a basis to grant review. For the bases for granting review, see HALLEX I-3-3-1.

If the AC finds that the claimant meets a good cause exception, the AC will evaluate the evidence of record with the additional evidence to determine whether the additional evidence provides a basis to grant review. The AC will grant review if it finds that:

- The additional evidence is new;
- The additional evidence is material;
- The additional evidence relates to the period on or before the date of the hearing decision; and
- There is a reasonable probability that the additional evidence would change the outcome of the decision.

See HALLEX I-3-3-6 B.

NOTE: These instructions only apply when the analyst recommends denying the request for review. When the analyst does not recommend a denial of the request for review, the analyst will refer to the applicable HALLEX instructions for the recommended action.

If review of the record suggests a denial of the request for review is appropriate, the analyst will follow the instructions in C below, as applicable.

2. Title XVI Cases Not Based on an Application for Benefits

If the decision involves a title XVI age 18 redetermination, CDR, or termination, the AC will evaluate whether the additional evidence is material to an issue being considered. If the AC finds that the evidence is not material to an issue being considered, the AC will not consider the evidence and will follow the instructions in C below. If the AC finds the additional evidence is material to an issue being considered, the AC will consider the additional evidence with the evidence of record and will grant review if the additional evidence is new, material, and relates to the period on or before the date of the hearing decision, and if there is a reasonable probability that the additional evidence will change the outcome of the decision. See 20 CFR 404.970(a)(5) and 416.1470(a)(5).

If the additional evidence is not material to an issue being considered, the analyst will not consider the additional evidence. The analyst will review the record absent the additional evidence to determine whether the record provides another basis to grant review. For the bases for granting review, see HALLEX I-3-3-1. If review of the record suggests a denial of the request for review is appropriate, the analyst will follow the instructions in C below, as applicable.

C. Denial Notice Requirements When the AC Does Not Consider Additional Evidence

If the analyst recommends that the AC deny the request for review and the AC will not consider additional evidence the claimant submitted, 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.
   - As applicable, explain in the analysis whether the claimant has shown good cause.

- Explain in the analysis if the evidence is not material, does not relate to the period at issue, or does not show a reasonable probability that it would change the outcome of the decision.

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 the reason we are not considering it:
   - We find that you did not have good cause for why you missed informing us about or submitting this evidence earlier. We did not consider and exhibit this evidence.
   - This evidence is not new because it is a copy of Exhibit(s) [Number]. We did not consider and exhibit this evidence.
   - This evidence is not material because it is not relevant to your claim for disability. We did not consider and exhibit this evidence.
   - This additional evidence does not relate to the period at issue. Therefore, it does not affect the decision about whether you are disabled beginning on or before the date last insured or decision date, as applicable.
   - We find this evidence does not show a reasonable probability that it would change the outcome of the decision. We did not consider and exhibit this evidence.
5. Include language stating that SSA 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, if the AC:
   - Did not evaluate the additional evidence because the claimant did not show good cause for not submitting the evidence to SSA previously; or
   - Did not evaluate the additional evidence because the evidence is not related to the period on or before the ALJ decision.

   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 generally 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 51501.000.

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.

6. Return the evidence to the claimant by mail if the evidence is unusual or original, such as an original or certified copy of a marriage or birth certificate. The AC will not regularly return copies of medical evidence or other routine evidence, but when an original copy of a document is submitted, the AC will consider who submitted the information and by what means, whether the claimant is represented, and whether it appears that the claimant otherwise has access to the information. If it appears, based on the circumstances, that the claimant may need the original information returned, the AC will return the information. If the claimant or appointed representative submits documents related to a non-party in support of a grant review action, see HALLEX I-3-2-24.

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 his or her branch chief before taking any action that may give the claimant access to the evidence.

D. Denial Notice Requirements When the AC Considers Evidence

When the AC evaluates a decision that is not based on an application for benefits and involves title XVI of the Social Security Act (the Act) (e.g., age 18 redeterminations, CDRs, or terminations), 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 stating, as applicable:
  - We considered the additional evidence but found that it did not provide a basis to grant review.

NOTE: Paper claim(s) 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 claim(s) file that has existing exhibits 1F-14F, the new exhibit should be numbered 15F.