



# Just the Facts

Regulations and Tips for BPA&O and PABSS by Ray Cebula

## Title: New Administrative Process for Initial Disability Claims

The Social Security Administration has finalized new rules that will dramatically alter the administrative appeal and review process used when a claimant files an application for SSI on the basis of disability or blindness and/or Title II disability claims. The reconsideration and Appeals Council steps in the existing appeals process have been eliminated, new evidence admission criteria have been established and a “quick decision” process has been created to expedite those claims that will clearly meet SSA’s disability definition. The new process is known as the Disability Service Improvement (DSI) process.

The new process changes will only apply to initial disability applications. The current appeals process will continue to be used for post entitlement issues.

### Why the Change?

In January 2005, nearly 8 million disabled workers and their dependents received SSDI benefits; double the number receiving benefits in 1985. Nearly 6 million disabled adults and children receive SSI benefits; more than double the number of recipient in 1985. With the number of applications growing to 2.6 million annually and the number of hearing requests reaching 1/2 million, adjustments to a

process that could take years to wade through were required.

SSA indicates in its introductory remarks to these final rules that the purpose of the new process is to improve the accuracy, consistency, and fairness of the disability determination process and to make the “right decision” as early in the process as possible.

When a claimant files an initial application for benefits based on disability or blindness at their local SSA office an initial determination will be made on that claim. Initial determinations are those decisions that are amendable to appeal. In certain, very specific cases, SSA will refer a new claim for a “quick decision,” known as a Quick Disability Determination. Should the claimant’s application be denied at the initial level, a request for review by a Federal Reviewing Official (FRO) can be made. If the FRO decision continues to result in a denial of benefits eligibility, the claimant may request a hearing decision before an Administrative Law Judge (ALJ). This ALJ decision will become the final decision of the Commissioner unless the claim is selected for review by the newly created Decision Review Board (DRB). Should either an ALJ or DRB final decision of the Commissioner not be to the claimant’s liking, an appeal can be made to the Federal District Court.

### Rollout of the New Process

Beginning on August 1, 2006, the new administrative process will be used in Region I (ME, NH, VT, MA, RI, CT). SSA plans to review and study the implementation of the new process for at least one year before rolling it into other regions. New claims filed with SSA on or after August 1, 2006, in Region I will utilize the new process. “Pipeline” claims will continue with the process used when the application was filed.

### Details of the New Administrative Process

**Step One:** An initial application will be filed with the claimant’s local SSA office. The state agency, the Disability Determination Service (DDS), will receive the application and associated medical evidence for evaluation. If the claim appears to be likely to be approved, DDS can refer the claim for a Quick Disability Determination (QDD). If not, the claim will proceed through the DDS development and decision making process.

**Step Two:** If the claim is denied, the claimant can request review by a Federal Reviewing Official.

**Step Three:** Should the claimant remain dissatisfied with the decision, a request for a hearing before an Administrative Law Judge (ALJ) can be made.

**Step Four:** The claimant’s next appeal would be to the Federal Court. However,

the new SSA Decision Review Board (DRB) may decide to review a decision made by an ALJ. Notice of such action will be provided to the claimant. The DRB is, however, not an available avenue of appeal for a dissatisfied claimant.

All appeal periods continue to be 60 days.

### The QDD

A Quick Disability Determination will allow the SSA local offices to use a “predictive model” to refer claims to a QDD unit at each DDS. Should the DDS claims examiner and the DDS medical expert agree that the claim meets the “to be developed” QDD standards a favorable decision will be made within 20 calendar days of DDS’ receipt of the claim. There is an assumption that a QDD claim has been significantly developed by the claimant (and representative) before an application for benefits is submitted. If the examiner and expert do not agree, or if the decision can not be made in the 20 day processing time, the claim will be transferred out of the QDD unit and will be processed by DDS in the normal manner.

During the development of a claim at DDS, new evidence can be submitted at any time.

The QDD is intended to provide those claimants who clearly meet SSA’s definition of disability with a fast, favorable decision in order to begin the payment of benefits as soon as possible.

## The Federal Reviewing Official (FRO)

This new federal position is intended to ensure, to the maximum extent possible, the accuracy and consistency of determinations made by the state agencies. The Federal Reviewing Official will be an attorney charged with reviewing the claims of dissatisfied claimants who have requested review. A claimant is allowed to submit additional evidence to the FRO for consideration and the FRO has the authority to initiate further development.

During consideration of a denied claim, the FRO can ask the state agency to clarify its position or to provide additional information explaining the basis of the initial decision. However, the FRO will retain the authority to make a decision as to whether or not the claimant is disabled.

The FRO will have subpoena authority and the SSA Office of the General Counsel may seek enforcement of FRO issued subpoenas.

## The Administrative Law Judge (ALJ) Hearing

The ALJ hearing itself will remain unchanged and will continue to be a de novo hearing. However, the submission of evidence will be somewhat restricted. Any new evidence must be submitted to the ALJ no later than 5 business days before the hearing. There are limited circumstances under which an exception to this rule may be allowed. The exceptions allow the ALJ to consider whether the claimant was misled by SSA, had a physical, mental, educational,

or linguistic limitation that prevented submission earlier, or faced some unusual, unexpected, or unavoidable circumstance beyond the claimant's control.

The ALJ will notify the claimant (and representative, if any) of the time and place for the hearing at least 75 days before the date of the hearing. Should the claimant (or representative) object to the time and/or place of the hearing, any objection must be filed within 30 days of receipt of the notice of hearing. Any objection to the issues to be discussed at hearing must be filed in writing with the ALJ at least 5 business days before the hearing.

The record will be closed after the ALJ issues a decision. A specific "good cause" provision exists for those seeking exceptions from this rule.

The notice of decision will inform the claimant whether or not the ALJ decision is the final decision of the agency. If it is not, the notice will also explain the fact that the DRB has decided to review the claim.

## The Decision Review Board (DRB)

The DRB is a new review body that has been created to identify and correct decisional errors and to identify issues that may impede consistent adjudication at all levels of the determination process. The DRB will replace the current Appeals Council after the gradual roll out of the new process is complete.



The DRB will review both favorable and unfavorable ALJ decisions on a random basis. There is no avenue by which a claimant can request DRB review. Should the DRB not select an unfavorable ALJ decision for review, the claimant's next appeal would be directly to the Federal Court. If the DRB decides to review an ALJ decision the claimant will be notified of the review with the ALJ decision. The claimant (or representative) can submit a statement explaining why they agree or disagree with the ALJ's decision whether or not such a statement is requested by the DRB. The statement must be no longer than 2000 words and, if typed, with a 12-point font or larger.

New evidence will only be accepted if submitted within 30 days of the ALJ decision and if the circumstances outlined above are met.

The DRB has the authority to affirm, modify, remand or reverse the ALJ decision. If the DRB does not complete its review within 90 days of the notice to the claimant it will take no further action on the claim unless the DRB decides that a fully favorable decision can be issued. Otherwise, if the DRB fails to complete its review with the 90 day period, the ALJ decision will become the final SSA decision and the claimant will have the right to seek review by the Federal Court.

## **Why PABSS and BPAO Must be Familiar with this Process**

Both PABSS and BPAO personnel are prohibited from using SSA funds to assist claimants with an application for disability benefits. However, all of our clients have experience with the disability determination process. Knowledge of the initial administrative review process is necessary when attempting to understand just where your client has been and how the legal processes in which they may now be involved differ from that experience.

Again, the current appeals will continue to be used for post entitlement issues for the foreseeable future. The ability to explain how this process differs from that used in the initial determination process is necessary to provide excellent assistance to those beneficiaries needing to file post entitlement appeals.