

## Income Network Alert

**MARCH 28, 2017**

In the waning days of the Obama Administration, the Social Security Administration (SSA) finalized two new sets of regulations that will have significant impacts on the disability determination process for those applying for Social Security Disability Insurance benefits and those applying for Supplemental Security Income benefits on the basis of disability.

The first set of regulations, **Ensuring Program Uniformity at the Hearing and Appeals Council Levels of the Administrative Review Process**, was finalized on December 16, 2016 and published at [81 Federal Register 90987](#). Although the notice says that the rule goes into effect on January 17, 2017, it also states that “compliance is not required until May 1, 2017.”

The final rule requires claimants and their representatives to submit or inform SSA about all evidence at least five business days before a hearing before an Administrative Law Judge (ALJ), unless a “good cause” exception applies. It also clarifies certain aspects of these good cause exceptions, and allows for exceptions to the new deadlines for subpoena requests, objections to issues raised in the notice of hearing, and pre-hearing written statements. Although there is now a deadline for pre-hearing statements, post-hearing statements are still allowed. Hearing notices will be provided at least 75 days before a hearing nationwide, rather than the current requirement of 20 days (outside of Region I).

The second set of regulations, **Revisions to Rules Regarding the Evaluation of Medical Evidence**, was published on January 18, 2017 at [82 Federal Register 5844](#). These regulations become effective on March 27, 2017, although many aspects will only apply to claims filed on or after that date.

Most notably, these regulations expand the list of acceptable medical sources (AMS) and eliminate the long-standing treating physician rule. Physicians Assistants (PAs) and Advance Practice Registered Nurses (APRNs) will be included in the list of AMSs. Licensed audiologists and optometrists can also be AMSs for certain purposes within the scopes of their practices. Chiropractors, Licensed Clinical Social Workers (LCSW) and registered nurses (RN) are still not AMSs, although many comments were submitted in support of including them.

Under the new regulations, adjudicators will give no special weight to the medical opinions of a claimant’s treating doctors. Instead, medical opinions and prior administrative medical findings will be evaluated equally for “persuasiveness,” based most importantly on consistency and supportability. SSA will also rescind the following Social Security Rulings (SSRs) that would be inconsistent or duplicative of these final rules:

- SSR 96-2p: Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions
- SSR 96-5p: Titles II and XVI: Medical Source Opinions on Issues Reserved to the Commissioner
- SSR 96-6p: Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence
- SSR 06-03p: Titles II and XVI: Considering Opinions and Other Evidence from Sources Who Are Not “Acceptable Medical Sources” in Disability Claims; Considering Decisions on Disability by Other Governmental and Nongovernmental Agencies

Because SSR 96-6p is rescinded, SSA will publish a new SSR that will discuss how ALJs and the Appeals Council must obtain evidence sufficient to make a finding of medical equivalence.

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URL's to links referenced:

**Ensuring Program Uniformity at the Hearing and Appeals Council Levels of the Administrative Review Process**

81 Federal Register 90987 | finalized on December 16, 2016

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-16/pdf/2016-30103.pdf>

**Revisions to Rules Regarding the Evaluation of Medical Evidence**

82 Federal Register 5844 | published on January 18, 2017

<https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00455.pdf>