

tence is applicable, or in the case of his death, his survivors entitled to monthly benefits under section 202 of the Social Security Act [42 U.S.C. 402] on the basis of his wages and self-employment income, shall be entitled to a recomputation of his primary insurance amount under such section 215(f)(2)(A) or section 215(f)(4)(A), as the case may be, if the conditions specified therein are met and if, with respect to a recomputation under such section 215(f)(2)(A), such individual files the application referred to in such section after August 1954 and prior to January 1956 or, with respect to a recomputation under such section 215(f)(4)(A), such individual died prior to January 1956 and any of such survivors entitled to monthly benefits files an application, in addition to the application filed for such monthly benefits, for a recomputation under such section 215(f)(4)(A).

“(2) For purposes of a recomputation made by reason of paragraph (1) of this subsection, the primary insurance amount of the individual who performed the services referred to in such paragraph shall be computed under subsection (a)(2) of section 215 of the Social Security Act, as amended by this Act (but, for such purposes, without application of subsection (d)(4) of such section, as in effect prior to the enactment of this Act or as amended by this Act) and as though he became entitled to old-age insurance benefits in whichever of the following months yields the highest primary insurance amount:

“(A) the month following the last month for which deductions are deemed, pursuant to paragraph (1) of this subsection, to have been made; or

“(B) the first month after the month determined under subparagraph (A) (and prior to September 1954) in which his benefits under section 202(a) of the Social Security Act [42 U.S.C. 402(a)] were no longer subject to deductions under section 203(b) of such Act [42 U.S.C. 403(b)]; or

“(C) the first month after the last month (and prior to September 1954) in which his benefits under section 202(a) of the Social Security Act were subject to deductions under section 203(b) of such Act; or

“(D) the month in which such individual filed his application for recomputation referred to in paragraph (1) of this subsection or, if he died without filing such application and prior to January 1, 1956, the month in which he died, and in any such case (but, if the individual is deceased, only if death occurred after August 1954) the amendments made by subsections (b)(1), (e)(1) and (e)(3)(B) of section 102 of this Act [amending section 415 of this title] shall be applicable.

Such recomputation shall be effective for and after the month in which the application required by paragraph (1) of this subsection is filed. The provisions of this subsection shall not be applicable in the case of any individual if his primary insurance amount has been recomputed under section 215(f)(2) of the Social Security Act on the basis of an application filed prior to September 1954.

“(3) If any recomputation under section 215(f) of the Social Security Act is made by reason of deductions deemed pursuant to paragraph (1) of this subsection to have been imposed with respect to benefits based on the wages and self-employment income of any individual, the total of the benefits based on such wages and self-employment income for months for which such deductions are so deemed to have been imposed shall be recovered by making, in addition to any other deductions under section 203 of such Act, deductions from any increase in benefits, based on such wages and self-employment income, resulting from such recomputation.”

§ 419. Repealed. Pub. L. 86-778, title I, § 103(j)(1), Sept. 13, 1960, 74 Stat. 937

Section, act Aug. 14, 1935, ch. 531, title II, § 219, as added Aug. 28, 1950, ch. 809, title I, § 107, 64 Stat. 517, prescribed the effective date of this subchapter in Puerto Rico as January 1 of the first calendar year which

begins more than 90 days after the date on which the President received a certification from the Governor of Puerto Rico.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 13, 1960, see section 103(v)(1), (3) of Pub. L. 86-778, set out as an Effective Date of 1960 Amendment note under section 402 of this title.

§ 420. Disability provisions inapplicable if benefit rights impaired

None of the provisions of this subchapter relating to periods of disability shall apply in any case in which their application would result in the denial of monthly benefits or a lump-sum death payment which would otherwise be payable under this subchapter; nor shall they apply in the case of any monthly benefit or lump-sum death payment under this subchapter if such benefit or payment would be greater without their application.

(Aug. 14, 1935, ch. 531, title II, § 220, as added Sept. 1, 1954, ch. 1206, title I, § 106(g), 68 Stat. 1081.)

PRIOR PROVISIONS

A prior section 420, act Aug. 14, 1935, ch. 531, title II, § 220, as added July 18, 1952, ch. 945, § 3(e), 66 Stat. 772, relating to inapplicability of disability provisions if benefits were reduced, ceased to be in effect at the close of June 30, 1953. See Effective and Termination Date of 1952 Amendment note set out under section 413 of this title.

§ 421. Disability determinations

(a) State agencies

(1) In the case of any individual, the determination of whether or not he is under a disability (as defined in section 416(i) or 423(d) of this title) and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Commissioner of Social Security in writing that it wishes to make such disability determinations commencing with such month as the Commissioner of Social Security and the State agree upon, but only if (A) the Commissioner of Social Security has not found, under subsection (b)(1) of this section, that the State agency has substantially failed to make disability determinations in accordance with the applicable provisions of this section or rules issued thereunder, and (B) the State has not notified the Commissioner of Social Security, under subsection (b)(2) of this section, that it does not wish to make such determinations. If the Commissioner of Social Security once makes the finding described in clause (A) of the preceding sentence, or the State gives the notice referred to in clause (B) of such sentence, the Commissioner of Social Security may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make disability determinations under this paragraph.

(2) The disability determinations described in paragraph (1) made by a State agency shall be made in accordance with the pertinent provisions of this subchapter and the standards and criteria contained in regulations or other writ-

ten guidelines of the Commissioner of Social Security pertaining to matters such as disability determinations, the class or classes of individuals with respect to which a State may make disability determinations (if it does not wish to do so with respect to all individuals in the State), and the conditions under which it may choose not to make all such determinations. In addition, the Commissioner of Social Security shall promulgate regulations specifying, in such detail as the Commissioner deems appropriate, performance standards and administrative requirements and procedures to be followed in performing the disability determination function in order to assure effective and uniform administration of the disability insurance program throughout the United States. The regulations may, for example, specify matters such as—

(A) the administrative structure and the relationship between various units of the State agency responsible for disability determinations,

(B) the physical location of and relationship among agency staff units, and other individuals or organizations performing tasks for the State agency, and standards for the availability to applicants and beneficiaries of facilities for making disability determinations,

(C) State agency performance criteria, including the rate of accuracy of decisions, the time periods within which determinations must be made, the procedures for and the scope of review by the Commissioner of Social Security, and, as the Commissioner finds appropriate, by the State, of its performance in individual cases and in classes of cases, and rules governing access of appropriate Federal officials to State offices and to State records relating to its administration of the disability determination function,

(D) fiscal control procedures that the State agency may be required to adopt, and

(E) the submission of reports and other data, in such form and at such time as the Commissioner of Social Security may require, concerning the State agency's activities relating to the disability determination.

Nothing in this section shall be construed to authorize the Commissioner of Social Security to take any action except pursuant to law or to regulations promulgated pursuant to law.

(b) Determinations by Commissioner

(1) If the Commissioner of Social Security finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with the Commissioner's regulations and other written guidelines, the Commissioner of Social Security shall, not earlier than 180 days following the Commissioner's finding, and after the Commissioner has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) of this section.

(2) If a State, having notified the Commissioner of Social Security of its intent to make disability determinations under subsection (a)(1) of this section, no longer wishes to make such determinations, it shall notify the Commissioner of Social Security in writing of that fact,

and, if an agency of the State is making disability determinations at the time such notice is given, it shall continue to do so for not less than 180 days, or (if later) until the Commissioner of Social Security has complied with the requirements of paragraph (3). Thereafter, the Commissioner of Social Security shall make the disability determinations referred to in subsection (a)(1) of this section.

(3)(A) The Commissioner of Social Security shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Commissioner of Social Security of the disability determination function from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process for the Commissioner of Social Security shall, notwithstanding any other provision of law, have a preference over any other individual in filling an appropriate employment position with the Commissioner of Social Security (subject to any system established by the Commissioner of Social Security for determining hiring priority among such employees of the State agency) unless any such employee is the administrator, the deputy administrator, or assistant administrator (or his equivalent) of the State agency, in which case the Commissioner of Social Security may accord such priority to such employee.

(B) The Commissioner of Social Security shall not make such assumption of the disability determination function until such time as the Secretary of Labor determines that, with respect to employees of such State agency who will be displaced from their employment on account of such assumption by the Commissioner of Social Security and who will not be hired by the Commissioner of Social Security to perform duties in the disability determination process, the State has made fair and equitable arrangements to protect the interests of employees so displaced. Such protective arrangements shall include only those provisions which are provided under all applicable Federal, State and local statutes including, but not limited to, (i) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (ii) the continuation of collective-bargaining rights; (iii) the assignment of affected employees to other jobs or to retraining programs; (iv) the protection of individual employees against a worsening of their positions with respect to their employment; (v) the protection of health benefits and other fringe benefits; and (vi) the provision of severance pay, as may be necessary.

(c) Review of determination by Commissioner

(1) The Commissioner of Social Security may on the Commissioner's own motion or as required under paragraphs (2) and (3) review a determination, made by a State agency under this section, that an individual is or is not under a disability (as defined in section 416(i) or 423(d) of this title) and, as a result of such review, may modify such agency's determination and determine that such individual either is or is not

under a disability (as so defined) or that such individual's disability began on a day earlier or later than that determined by such agency, or that such disability ceased on a day earlier or later than that determined by such agency. A review by the Commissioner of Social Security on the Commissioner's own motion of a State agency determination under this paragraph may be made before or after any action is taken to implement such determination.

(2) The Commissioner of Social Security (in accordance with paragraph (3)) shall review determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title). Any review by the Commissioner of Social Security of a State agency determination under this paragraph shall be made before any action is taken to implement such determination.

(3)(A) In carrying out the provisions of paragraph (2) with respect to the review of determinations made by State agencies pursuant to this section that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title), the Commissioner of Social Security shall review—

(i) at least 50 percent of all such determinations made by State agencies on applications for benefits under this subchapter, and

(ii) other determinations made by State agencies pursuant to this section to the extent necessary to assure a high level of accuracy in such other determinations.

(B) In conducting reviews pursuant to subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review those determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.

(C) Not later than April 1, 1992, and annually thereafter, the Commissioner of Social Security shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report setting forth the number of reviews conducted under subparagraph (A)(ii) during the preceding fiscal year and the findings of the Commissioner of Social Security based on such reviews of the accuracy of the determinations made by State agencies pursuant to this section.

(d) Hearings and judicial review

Any individual dissatisfied with any determination under subsection (a), (b), (c), or (g) of this section shall be entitled to a hearing thereon by the Commissioner of Social Security to the same extent as is provided in section 405(b) of this title with respect to decisions of the Commissioner of Social Security, and to judicial review of the Commissioner's final decision after such hearing as is provided in section 405(g) of this title.

(e) State's right to cost from Trust Funds

Each State which is making disability determinations under subsection (a)(1) of this section shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as determined by the Commissioner of Social Security, the cost to the State of making dis-

ability determinations under subsection (a)(1) of this section. The Commissioner of Social Security shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period; and the Managing Trustee, prior to audit or settlement by the Government Accountability Office, shall make payment from the Trust Funds at the time or times fixed by the Commissioner of Social Security, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 401 of this title (but taking into account any refunds under subsection (f) of this section) to insure that the Federal Disability Insurance Trust Fund is charged with all expenses incurred which are attributable to the administration of section 423 of this title and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

(f) Use of funds

All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury of the United States for deposit in the Trust Funds.

(g) Regulations governing determinations in certain cases

In the case of individuals in a State which does not undertake to perform disability determinations under subsection (a)(1) of this section, or which has been found by the Commissioner of Social Security to have substantially failed to make disability determinations in a manner consistent with the Commissioner's regulations and guidelines, in the case of individuals outside the United States, and in the case of any class or classes of individuals for whom no State undertakes to make disability determinations, the determinations referred to in subsection (a) of this section shall be made by the Commissioner of Social Security in accordance with regulations prescribed by the Commissioner.

(h) Evaluation of mental impairments by qualified medical professionals

An initial determination under subsection (a), (c), (g), or (i) of this section that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Commissioner of Social Security has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.

(i) Review of disability cases to determine continuing eligibility; permanent disability cases; appropriate number of cases reviewed; reporting requirements

(1) In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Commissioner of Social Security (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years, subject to paragraph (2); except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Commissioner of Social Security determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this subchapter.

(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Commissioner of Social Security determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Commissioner of Social Security shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Commissioner of Social Security shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Commissioner of Social Security under the preceding sentence.

(3) The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d) of this section, or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.

(4) In any case in which the Commissioner of Social Security initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Commissioner of Social Security shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.

(5) For suspension of reviews under this subsection in the case of an individual using a tick-

et to work and self-sufficiency, see section 1320b-19(i) of this title.

(j) Rules and regulations; consultative examinations

The Commissioner of Social Security shall prescribe regulations which set forth, in detail—

(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

(2) standards for the type of referral to be made; and

(3) procedures by which the Commissioner of Social Security will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.

(k) Establishment of uniform standards for determination of disability

(1) The Commissioner of Social Security shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 416(i) or 423(d) of this title.

(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5.

(l) Special notice to blind individuals with respect to hearings and other official actions

(1) In any case where an individual who is applying for or receiving benefits under this subchapter on the basis of disability by reason of blindness is entitled to receive notice from the Commissioner of Social Security of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this subchapter, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Commissioner of Social Security and agreed to by the individual.

(2) The election under paragraph (1) may be made at any time, but an opportunity to make such an election shall in any event be given, to every individual who is an applicant for benefits under this subchapter on the basis of disability by reason of blindness, at the time of his or her application. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this subchapter until such time as it is revoked or changed.

(m) Work activity as basis for review

(1) In any case where an individual entitled to disability insurance benefits under section 423 of

this title or to monthly insurance benefits under section 402 of this title based on such individual's disability (as defined in section 423(d) of this title) has received such benefits for at least 24 months—

(A) no continuing disability review conducted by the Commissioner may be scheduled for the individual solely as a result of the individual's work activity;

(B) no work activity engaged in by the individual may be used as evidence that the individual is no longer disabled; and

(C) no cessation of work activity by the individual may give rise to a presumption that the individual is unable to engage in work.

(2) An individual to which paragraph (1) applies shall continue to be subject to—

(A) continuing disability reviews on a regularly scheduled basis that is not triggered by work; and

(B) termination of benefits under this subchapter in the event that the individual has earnings that exceed the level of earnings established by the Commissioner to represent substantial gainful activity.

(Aug. 14, 1935, ch. 531, title II, §221, as added Sept. 1, 1954, ch. 1206, title I, §106(g), 68 Stat. 1081; amended Aug. 1, 1956, ch. 836, title I, §103(c)(7), (8), (h), 70 Stat. 818, 823; Pub. L. 90-248, title I, §158(c)(3), (4), Jan. 2, 1968, 81 Stat. 869; Pub. L. 96-265, title III, §§304(a)-(f), 311(a), June 9, 1980, 94 Stat. 453-456, 460; Pub. L. 97-455, §§3(a), 6, Jan. 12, 1983, 96 Stat. 2499, 2500; Pub. L. 98-369, div. B, title VI, §2663(a)(14), July 18, 1984, 98 Stat. 1164; Pub. L. 98-460, §§6(a), 8(a), 9(a)(1), 10(a), 17(a), Oct. 9, 1984, 98 Stat. 1802, 1804, 1805, 1811; Pub. L. 99-514, title XVIII, §1883(a)(9), Oct. 22, 1986, 100 Stat. 2916; Pub. L. 100-647, title VIII, §8012(a), Nov. 10, 1988, 102 Stat. 3789; Pub. L. 101-239, title X, §10306(a)(1), Dec. 19, 1989, 103 Stat. 2484; Pub. L. 101-508, title V, §5128(a), Nov. 5, 1990, 104 Stat. 1388-286; Pub. L. 103-296, title I, §107(a)(4), Aug. 15, 1994, 108 Stat. 1478; Pub. L. 106-170, title I, §§101(b)(1)(A), 111(a), Dec. 17, 1999, 113 Stat. 1873, 1881; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 421, act Aug. 14, 1935, ch. 531, title II, §221, as added July 18, 1952, ch. 945, §3(e), 66 Stat. 772; amended by 1953 Reorg. Plan No. 1, §5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, relating to disability determinations, ceased to be in effect at the close of June 30, 1953. See section 3(g) of act July 18, 1952, set out as an Effective and Termination Date of 1952 Amendment note under section 413 of this title.

AMENDMENTS

2004—Subsec. (e). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

1999—Subsec. (i)(5). Pub. L. 106-170, §101(b)(1)(A), added par. (5).

Subsec. (m). Pub. L. 106-170, §111(a), added subsec. (m).

1994—Pub. L. 103-296 substituted "Commissioner of Social Security" for "Secretary" wherever appearing except where appearing before "of Labor" in subsec. (b)(3)(B) and substituted "the Commissioner deems" for "he deems" and "the Commissioner finds" for "he finds" in subsec. (a)(2), "the Commissioner's" for "his" wherever appearing in subsecs. (b)(1), (c)(1), and (g), "the Commissioner has complied" for "he has com-

plied" in subsec. (b)(1), "Commissioner's" for "Secretary's" in subsec. (d), and "prescribed by the Commissioner" for "prescribed by him" in subsec. (g).

1990—Subsec. (c)(3). Pub. L. 101-508 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "In carrying out the provisions of paragraph (2) with respect to the review of determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title), the Secretary shall review—

"(A) at least 15 percent of all such determinations made by State agencies in the fiscal year 1981,

"(B) at least 35 percent of all such determinations made by State agencies in the fiscal year 1982, and

"(C) at least 65 percent of all such determinations made by State agencies in any fiscal year after the fiscal year 1982."

1989—Subsec. (l). Pub. L. 101-239 added subsec. (l).

1988—Subsec. (i)(3). Pub. L. 100-647 substituted "semi-annually" for "annually".

1986—Subsec. (e). Pub. L. 99-514 struck out "under this section" before "shall be entitled".

1984—Subsec. (a)(1)(A). Pub. L. 98-460, §17(a)(2), (b), temporarily substituted "subsection (b)(1)(C) of this section" for "subsection (b)(1) of this section". See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(1). Pub. L. 98-460, §17(a)(1), (b), temporarily amended par. (1) generally. Prior to amendment, par. (1) read as follows: "If the Secretary finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with his regulations and other written guidelines, the Secretary shall, not earlier than 180 days following his finding, and after he has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) of this section." See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(3). Pub. L. 98-460, §17(a)(3), (b), temporarily substituted "Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary" for "The Secretary" in subpars. (A) and (B). See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (d). Pub. L. 98-460, §17(a)(4), (b), temporarily substituted "Except as provided in subsection (b)(1)(D) of this section, any individual" for "Any individual". See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (e). Pub. L. 98-369 substituted "Federal Disability Insurance Trust Fund is charged" for "Federal Disability Trust Fund is charged".

Subsec. (h). Pub. L. 98-460, §8(a), added subsec. (h).

Subsec. (i)(4). Pub. L. 98-460, §6(a), added par. (4).

Subsec. (j). Pub. L. 98-460, §9(a)(1), added subsec. (j).

Subsec. (k). Pub. L. 98-460, §10(a), added subsec. (k).

1983—Subsec. (i). Pub. L. 97-455 designated existing provisions as par. (1), inserted ", subject to paragraph (2)" after "at least once every 3 years", and added pars. (2) and (3).

1980—Subsec. (a). Pub. L. 96-265, §304(a), completely revised provisions under which determinations are to be made by State agencies.

Subsec. (b). Pub. L. 96-265, §304(b), substituted provisions covering the making of disability determinations by the Secretary rather than by the State for provisions relating to agreements between the Secretary and the State under which the State would make disability determinations.

Subsec. (c). Pub. L. 96-265, §304(c), designated existing provisions as par. (1), inserted provision that a review by the Secretary on his own motion of a State agency determination may be made before or after any action is taken to implement that determination, and added pars. (2) and (3).

Subsec. (d). Pub. L. 96-265, §304(d), substituted "subsection (a), (b), (c), or (g) of this section" for "subsection (a), (c), or (g) of this section".

Subsec. (e). Pub. L. 96-265, §304(e), substituted "which is making disability determinations under subsection

(a)(1)" for "which has an agreement with the Secretary", substituted "as determined by the Secretary" for "as may be mutually agreed upon", and substituted "making disability determinations under subsection (a)(1)" for "carrying out the agreement under this section".

Subsec. (g). Pub. L. 96-265, §304(f), substituted "does not undertake to perform disability determinations under subsection (a)(1) of this section, or which has been found by the Secretary to have substantially failed to make disability determinations in a manner consistent with his regulations and guidelines" for "has no agreement under subsection (b) of this section" and "for whom no State undertakes to make disability determinations" for "not included in an agreement under subsection (b) of this section".

Subsec. (i). Pub. L. 96-265, §311(a), added subsec. (i). 1968—Subsec. (a). Pub. L. 90-248, §158(c)(3), substituted in first sentence reference to "423(d)" for "423(c)".

Subsec. (c). Pub. L. 90-248, §158(c)(4), substituted reference to "423(d)" for "423(c)".

1956—Subsec. (a). Act Aug. 1, 1956, §103(c)(7), inserted reference to section 423(c) of this title.

Subsec. (c). Act Aug. 1, 1956, §103(c)(8), restricted disability to definition of such term contained in section 416(i) or 423(c) of this title.

Subsec. (e). Act Aug. 1, 1956, §103(h), substituted "Trust Funds" for "Trust Fund", and provided for adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to payments made under this subsection.

Subsec. (f). Act Aug. 1, 1956, §103(h), substituted "Trust Funds" for "Trust Fund".

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 101(b)(1)(A) of Pub. L. 106-170 effective with the first month following one year after Dec. 17, 1999, subject to section 101(d) of Pub. L. 106-170, see section 101(c) of Pub. L. 106-170, set out as an Effective Date note under section 1320b-19 of this title.

Pub. L. 106-170, title I, §111(b), Dec. 17, 1999, 113 Stat. 1881, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2002."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103-296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title V, §5128(b), Nov. 5, 1990, 104 Stat. 1388-287, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to determinations made by State agencies in fiscal years after fiscal year 1990."

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title X, §10306(a)(3), Dec. 19, 1989, 103 Stat. 2484, provided that: "The amendment made by this section [amending this section] shall apply with respect to notices issued on or after July 1, 1990."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VIII, §8012(b), Nov. 10, 1988, 102 Stat. 3789, provided that: "The amendment made by this section [amending this section] shall apply to reports required to be submitted after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENT

Pub. L. 98-460, §8(c), Oct. 9, 1984, 98 Stat. 1804, provided that: "The amendments made by this section [amending this section and section 1382c of this title] shall apply to determinations made after 60 days after the date of the enactment of this Act [Oct. 9, 1984]."

Pub. L. 98-460, §17(b), Oct. 9, 1984, 98 Stat. 1812, provided that: "The amendments made by subsection (a) of this section [amending this section] shall become effective on the date of the enactment of this Act [Oct. 9, 1984] and shall expire on December 31, 1987. The provisions of the Social Security Act amended by subsection (a) of this section (as such provisions were in effect immediately before the date of the enactment of this Act) shall be effective after December 31, 1987."

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-455, §3(b), Jan. 12, 1983, 96 Stat. 2499, provided that: "The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Jan. 12, 1983]."

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-265, title III, §304(h), June 9, 1980, 94 Stat. 456, provided that: "The amendments made by subsections (a), (b), (d), (e), and (f) [amending this section] shall be effective beginning with the twelfth month following the month in which this Act is enacted [June 1980]. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under section 221(a) of the Social Security Act [42 U.S.C. 421(a)] (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in section 221(a)(1) of such Act as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given."

Pub. L. 96-265, title III, §311(b), June 9, 1980, 94 Stat. 460, provided that: "The amendment made by subsection (a) [amending this section] shall become effective on January 1, 1982."

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-248 applicable with respect to application for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90-248, set out as a note under section 423 of this title.

ELECTION UNDER SUBSECTION (I)(1) BY CURRENT RECIPIENTS

Pub. L. 101-239, title X, §10306(a)(2), Dec. 19, 1989, 103 Stat. 2484, provided that: "Not later than July 1, 1990, the Secretary of Health and Human Services shall provide every individual receiving benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] on the basis of disability by reason of blindness an opportunity to make an election under section 221(I)(1) of such Act [42 U.S.C. 421(I)(1)] (as added by paragraph (1))."

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

Pub. L. 98-460, §5, Oct. 9, 1984, 98 Stat. 1801, provided that:

"(a) The Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall revise the criteria embodied under the category 'Mental Disorders' in the 'Listing of Impairments' in effect on the date of the enactment of this Act [Oct. 9, 1984] under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically

evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act.

“(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act [42 U.S.C. 421(i)], or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act [42 U.S.C. 1381 et seq.], with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

“(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

“(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term ‘continuing eligibility review’, when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

“(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act [42 U.S.C. 1382h]) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) and (f) of such Act [42 U.S.C. 402(e), (f)]).

“(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] after the date of the enactment of this Act [Oct. 9, 1984] and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

“(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

“(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act [Oct. 9, 1984], and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.”

INSTITUTION OF NOTIFICATION SYSTEM

Pub. L. 98-460, §6(c), Oct. 9, 1984, 98 Stat. 1802, provided that: “The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) [amending this section and section 1383b of this title] as soon as is practicable after the date of the enactment of this Act [Oct. 9, 1984].”

DEMONSTRATION PROJECTS; OPPORTUNITY FOR PERSONAL APPEARANCE PRIOR TO DISABILITY DETERMINATIONS; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 98-460, §6(d), (e), Oct. 9, 1984, 98 Stat. 1802, 1803, required the Secretary of Health and Human Services, as soon as practicable after Oct. 9, 1984, to implement demonstration projects in at least five States in which the opportunity for a personal appearance prior to a determination of ineligibility for disability benefits under 42 U.S.C. 421(i) or prior to initial disability determinations under 42 U.S.C. 421(a), (c), (g) and title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) was substituted for the face to face evidentiary hearing required by 42 U.S.C. 405(b)(2), and to report to the appropriate committees of Congress by Dec. 31, 1986.

PROMULGATION OF REGULATIONS

Pub. L. 98-460, §9(a)(2), Oct. 9, 1984, 98 Stat. 1805, provided that: “The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act [42 U.S.C. 421(j)] not later than 180 days after the date of the enactment of this Act [Oct. 9, 1984].”

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

Pub. L. 98-460, §15, Oct. 9, 1984, 98 Stat. 1808, provided that: “The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act [Oct. 9, 1984], which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act [42 U.S.C. 421(j)]. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.”

TRAVEL EXPENSES FOR MEDICAL EXAMINATIONS, RECONSIDERATION INTERVIEWS, AND PROCEEDINGS BEFORE ADMINISTRATIVE LAW JUDGES

Provisions authorizing payment of travel expenses either on an actual cost or commuted basis, to an individual for travel incident to medical examinations, and to parties, their representatives and all reasonably necessary witnesses for travel within the United States, Puerto Rico, and the Virgin Islands, to reconsider interviews and to proceedings before administrative law judges under subchapters II, XVI, and XVIII of this chapter were contained in the following appropriation acts:

Oct. 18, 1978, Pub. L. 95-480, title II, 92 Stat. 1582.
 Sept. 30, 1976, Pub. L. 94-439, title II, 90 Stat. 1432.
 Jan. 28, 1976, Pub. L. 94-206, title II, 90 Stat. 17.
 Dec. 7, 1974, Pub. L. 93-517, title II, 88 Stat. 1645.
 Dec. 18, 1973, Pub. L. 93-192, title II, 87 Stat. 759.
 Aug. 10, 1971, Pub. L. 92-80, title II, 85 Stat. 296.
 Jan. 11, 1971, Pub. L. 91-667, title II, 84 Stat. 2013.
 Mar. 5, 1970, Pub. L. 91-204, title II, 84 Stat. 41.
 Oct. 11, 1968, Pub. L. 90-557, title II, 82 Stat. 988.
 Nov. 8, 1967, Pub. L. 90-132, title II, 81 Stat. 402.
 Nov. 7, 1966, Pub. L. 89-787, title II, 80 Stat. 1395.
 Aug. 31, 1965, Pub. L. 89-156, title II, 79 Stat. 604.
 Sept. 19, 1964, Pub. L. 88-605, title II, 78 Stat. 974.
 Oct. 11, 1963, Pub. L. 88-136, title II, 77 Stat. 239.
 Aug. 14, 1962, Pub. L. 87-582, title II, 76 Stat. 375.
 Sept. 22, 1961, Pub. L. 87-290, title II, 75 Stat. 604.
 Sept. 2, 1960, Pub. L. 86-703, title II, 74 Stat. 769.
 Aug. 14, 1959, Pub. L. 86-158, title II, 73 Stat. 352.
 Aug. 1, 1958, Pub. L. 85-580, title II, 72 Stat. 471.
 June 29, 1957, Pub. L. 85-67, title II, 71 Stat. 221.

June 29, 1956, ch. 477, title II, 70 Stat. 434.
Aug. 1, 1955, ch. 437, title II, 69 Stat. 408.

REVIEW OF DECISIONS RENDERED BY ADMINISTRATIVE
LAW JUDGES AS RESULT OF DISABILITY HEARINGS;
REPORT TO CONGRESS

Pub. L. 96-265, title III, §304(g), June 9, 1980, 94 Stat. 456, provided that: "The Secretary of Health and Human Services shall implement a program of reviewing, on his own motion, decisions rendered by administrative law judges as a result of hearings under section 221(d) of the Social Security Act [42 U.S.C. 421(d)], and shall report to the Congress by January 1, 1982, on his progress."

ASSUMPTION BY SECRETARY OF FUNCTIONS AND OPERATIONS OF STATE DISABILITY DETERMINATION UNITS

Pub. L. 96-265, title III, §304(i), June 9, 1980, 94 Stat. 457, directed Secretary of Health and Human Services to submit to Congress by July 1, 1980, a detailed plan on how he intended to assume functions and operations of a State disability determination unit when this became necessary under amendments made by this section [amending this section], and how he intended to meet requirements of section 221(b)(3) of Social Security Act [42 U.S.C. 421(b)(3)]. Such plan was to assume the uninterrupted operation of disability determination function and utilization of best qualified personnel to carry out such function, and was to include recommendations for any amendment of Federal law or regulation required to carry out such plan.

§ 422. Rehabilitation services

(a), (b) Repealed. Pub. L. 106-170, title I, § 101(b)(1)(B), (C), Dec. 17, 1999, 113 Stat. 1873

(c) "Period of trial work" defined

(1) The term "period of trial work", with respect to an individual entitled to benefits under section 423, 402(d), 402(e), or 402(f) of this title, means a period of months beginning and ending as provided in paragraphs (3) and (4).

(2) For purposes of sections 416(i) and 423 of this title, any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. For purposes of this subsection the term "services" means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain.

(3) A period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits, or, in the case of an individual entitled to benefits under section 402(d) of this title who has attained the age of eighteen, with the month in which he becomes entitled to such benefits or the month in which he attains the age of eighteen, whichever is later, or, in the case of an individual entitled to widow's or widower's insurance benefits under section 402(e) or (f) of this title who became entitled to such benefits prior to attaining age 60, with the month in which such individual becomes so entitled. Notwithstanding the preceding sentence, no period of trial work may begin for any individual prior to the beginning of the month following September 1960; and no such period may begin for an individual in a period of disability of such individual in which he had a previous period of trial work.

(4) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(A) the ninth month, in any period of 60 consecutive months, in which the individual renders services (whether or not such nine months are consecutive); or

(B) the month in which his disability (as defined in section 423(d) of this title) ceases (as determined after application of paragraph (2) of this subsection).

(5) Upon conviction by a Federal court that an individual has fraudulently concealed work activity during a period of trial work from the Commissioner of Social Security by—

(A) providing false information to the Commissioner of Social Security as to whether the individual had earnings in or for a particular period, or as to the amount thereof;

(B) receiving disability insurance benefits under this subchapter while engaging in work activity under another identity, including under another social security account number or a number purporting to be a social security account number; or

(C) taking other actions to conceal work activity with an intent fraudulently to secure payment in a greater amount than is due or when no payment is authorized,

no benefit shall be payable to such individual under this subchapter with respect to a period of disability for any month before such conviction during which the individual rendered services during the period of trial work with respect to which the fraudulently concealed work activity occurred, and amounts otherwise due under this subchapter as restitution, penalties, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which such individual is liable as overpayments by reason of such concealment.

(d) Cost of rehabilitation services from trust funds

(1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

(A) entitled to disability insurance benefits under section 423 of this title,

(B) entitled to child's insurance benefits under section 402(d) of this title after having attained age 18 (and are under a disability),

(C) entitled to widow's insurance benefits under section 402(e) of this title prior to attaining age 60, or

(D) entitled to widower's insurance benefits under section 402(f) of this title prior to attaining age 60,

to the end that savings will accrue to the Trust Funds as a result of rehabilitating such individuals, there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to enable the Commissioner of Social Security to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods), under a State plan for vocational rehabilitation