



New Social Security Disability Policy Is Bad News

Written On August 1, 2011 By [Bob Kraft](#)

The National Organization of Social Security Claimants Representatives (NOSSCR) issued a press release July 28, 2011, explaining the details of a new and troubling policy of the Social Security Administration. In a nutshell, the new policy is that a person whose claim for Social Security disability has been denied cannot file a new claim while the denial is being appealed.

The reason this is so bad for claimants is a little complicated to explain, but it is definitely not good news for disabled people. Here is the NOSSCR explanation:

In today's Federal Register, SSA published SSR 11-1p, which revises SSA's policy for filing subsequent applications where a prior application is pending at the Appeals Council. 76 Fed. Reg. 45309 (July 28, 2011). Available at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-28/pdf/2011-19103.pdf>.

Under SSR 11-1p, which is effective today, SSA "will no longer process a subsequent disability claim if you already have a claim under the same title and of the same type pending in our administrative review process." This SSR does not change SSA's policy where an appeal is pending in federal court. In those cases, the claimant may file a new

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application while the court case is pending. According to SSA, SSR 11-1p will not apply to subsequent applications that were filed before July 28, 2011.

Key provisions of SSR 11-1p:

A claimant who wants to file a new disability claim under the same title and of the same benefit type will have to choose between continuing with the administrative appeal or declining to pursue administrative review and filing a new application.

If the choice is to pursue the administrative appeal, SSA will not accept the subsequent application.

Additional evidence reporting a new medical condition or a worsening of existing medical conditions can still be submitted. If submitted to an SSA Field Office, the evidence will be forwarded (in most cases, electronically) to the office handling the claim, e.g., the ODAR hearing office or the Appeals Council.

If the claimant decides to pursue the first claim and it is pending at the Appeals Council and additional evidence is submitted, the Appeals Council will first determine if the evidence relates to the period on or before the date of the ALJ hearing decision. If it does relate to that period, the Appeals Council will consider it with the rest of the record. See 20 C.F.R. §§ 404.970(b) and 416.1470(b). In Region I states, see 20 C.F.R. § 405.373.

If the new and material evidence relates to the period on or before the date of the hearing decision and “shows a critical or disabling condition, the Appeals Council will expedite its review of your pending claim.”

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If the additional evidence relates to the period after the date of the ALJ decision, the Appeals Council will return the evidence to the claimant per 20 C.F.R. §§ 404.976(b) and 416.1476(b).

The evidence will be returned when the Appeals Council takes action on the appealed claim. The notice from the Appeals Council will inform the claimant that “under certain circumstances,” SSA will consider the date the request for review was filed as the protective filing date for the new claim. To be covered by the protective filing date, new Title II applications will need to be filed within six months of the date of the Appeals Council notice; new SSI claims will need to be filed within 60 days of the notice. *Id.* The new application can be filed only after the Appeals Council completes action on the request for review of the first claim.

If the claimant decides not to pursue further review of the pending claim, a new application can be filed. However, the claimant will need to withdraw the request for review. See 20 C.F.R. §§ 404.971 and 416.1471.

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