

Continuing Disability Reviews



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Overview of CDRs

- A brief history of Continuing Disability Reviews
- The importance of the Medical Improvement Standard
- Why understanding the CDR regulations is important now

Continuing Disability Reviews

- Continuing Disability Reviews:
 - SSA must review disability eligibility of most SSI/DI recipients at least every 3 years.
 - Recipients deemed likely to medically improve may be reviewed more frequently.
 - Recipients deemed permanently disabled are reviewed less frequently, usually every 7 yrs. Some are reviewed at 3-5 years
 - 20 CFR 404.1590, 416.990

Adult CDR Sequential Analysis

- **Step 1:** Is the claimant engaging in SGA?
 - **If yes**, and if the claimant is not entitled to eligibility under Section 1619 or to a trial work period or reentitlement period, benefits cease. **If no**, go to Step 2.
- **Step 2:** Do the claimant’s current impairments meet or equal the severity of a listed impairment?
 - **If yes**, entitlement continues. **If no**, go to Step 3.

Adult CDR Sequential Analysis

- **Step 3:** Has there been medical improvement in the claimant’s conditions considered in the comparison point decision (CPD), the last prior favorable medical review.
 - **If yes**, go to Step 4. **If no**, go to Step 5.
- **Step 4:** Is the medical improvement related to the claimant’s ability to work?
 - **If yes**, go to Step 6. **If no** go to Step 5.

Adult CDR sequential Analysis

- **Step 5:** Do any of the first or second group of exceptions apply?
 - **First group** of exceptions allow SSA to skip medical improvement test (Steps 3 & 4) – If any apply, go to Step 6 (current disability review).
 - **Second group** of exceptions allow SSA to terminate or suspend benefits.

First Group of Exceptions
20 CFR 404.1594(d), 416.994(b)(3)

- Substantial Gainful Activity.
 - **Does not apply to SSI**, 20 CFR 416.994(b)(3)(v) or to Title II recipients entitled to a trial work period or extended period of eligibility. 20 CFR 404.1594(d)(5).
- Advances in medical or vocational technology or therapy.
- New/improved diagnostic techniques/evaluations.
- The prior disability decision was in error.
 - Clear error or adjudicative

Second Group of Exceptions
20 CFR 404.1594(e), 416.994(b)(4)

- The prior disability decision was fraudulently obtained.
- The claimant fails to cooperate without good cause.
- Inability to locate the claimant after reasonable effort.
- Failure to Follow Prescribed Treatment.

Adult CDR Sequential Analysis

- **Step 6:** Does the claimant have a 'severe' impairment, considering all current impairments?
 - **If yes**, go to Step 7. **If no**, benefits cease.
- **Step 7:** Is the claimant able to perform past relevant work, considering all current impairments?
 - **If yes**, benefits cease. **If no**, go to Step 8.

Adult CDR Sequential Analysis

- **Step 8:** Is the claimant able to perform other work, considering all the claimant's current impairments and the claimant's age, education, and work history?
 - If yes, the benefits cease. If no, benefits continue.
- For more on the CDR sequential analysis for adults, see 20 CFR 404.1594, 416.994, POMs DI 28005.010, DI 26005.015.

CDR Appeal Process

- SSA provides notice that a CDR has begun and invites beneficiaries to submit evidence of continuing disability. 20 CFR 404.1589, 416.989.
- Some beneficiaries may first receive a questionnaire SSA uses to determine whether a full CDR is a priority. POMS DI 13004.000 et seq.

CDR Appeals: Reconsideration

- If the initial CDR decision is cessation, the appeal period is:
 - 60 days; but
 - 10 days to appeal and request benefits continuing
 - Don't forget the extra 5 days.
- If DDS will deny after file review, beneficiaries have an opportunity for an in-person hearing at DDS. 20 CFR 404.914-.917, 416.1414-.1417. **IMPORTANT OPPORTUNITY TO OBTAIN FAVORABLE DETERMINATION**

CDR Appeals: 5 Day Mailing Rule and Good Cause for Late Appeal

- The 5 day mail rule applies to both the 10 & 60 day periods. 20 CFR 404.901, 416.1401.
- Good cause late appeal also applies to both the 10 day and 60 day periods. 20 CFR 404.1597a(f)(2)&(g)(3), 416.996(c)(2)&(d)(2).
- Note that who determines “good cause” depends on what stage of the process claimant is at (Field Office vs ODAR)

CDR Appeals: ALJ Hearing

- If the Reconsideration decision upholds the initial cessation decision, the appeal period is:
 - 60 days; but
 - 10 days to appeal(Request for Hearing) and request benefits continuing.
 - 20 CFR 404.1597a(g), 416.996(d).
- The claimant must again request benefit continuation even if done at previous level.
- The claimant may elect benefits continuing at this stage even if not elected at Reconsideration.

CDR Appeals: Appeals Council

- If the ALJ decision upholds the cessation decision, the appeal period is 60 days.
- No benefits continuation is available pending the Appeals Council’s decision.

Overpayment: Benefits Continuing

- After the ALJ decision or when the individual does not appeal an unfavorable decision, SSA may provide notice of overpayment and collect the overpayment.
- The claimant may file a Request for Waiver.
- The standard for obtaining a waiver is 1) good faith appeal and 2) inability to repay. 20 CFR 404.1597a(j), 416.996(g).
- Be aware of withdrawals/dismissals

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