

2. After a redetermination, an individual may appeal our determination that after disregarding evidence, the remaining evidence does not support that individual's entitlement to or eligibility for benefits and results in termination of such entitlement or eligibility. The individual may appeal any overpayments we assess based on such evidence.

3. An individual may appeal our finding of fraud or similar fault. However, we will not administratively review information provided by SSA's Office of the Inspector General under section 1129(l) of the Act regarding its reason to believe that fraud was involved in the individual's application for benefits.

**DATES:** Effective Date: This SSR is effective on March 14, 2016.

**CROSS-REFERENCES:** SSR 85-23, "Title XVI: Reopening Supplemental Security Income Determinations at Any Time for 'Similar Fault.'" SSR 16-2p, "Titles II and XVI: Evaluation of Claims Involving the Issue of 'Similar Fault' in the Providing of Evidence."

[FR Doc. 2016-05661 Filed 3-11-16; 8:45 am]

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## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2015-0070]

### Social Security Acquiescence Ruling (AR) 16-1(7), *Boley v. Colvin*: Judicial Review of an Administrative Law Judge's Order Finding No Good Cause for a Late Hearing Request and Dismissing the Request as Untimely—Titles II and XVI of the Social Security Act

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Acquiescence Ruling (AR).

**SUMMARY:** We are publishing this Social Security AR to explain how we will apply a holding in a decision of the United States Court of Appeals for the Seventh Circuit that we have determined conflicts with our interpretation of the law regarding judicial review of an administrative law judge's (ALJ's) order finding no good cause for a late hearing request and dismissing the request as untimely.

**DATES:** *Effective:* March 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Todd Lewellen, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-3309, or TTY 410-966-5609, for information about this notice. For information on eligibility or filing for

benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** We are publishing this Social Security AR in accordance with 20 CFR 402.35(b)(2), 404.985(a), (b), and 416.1485(a), (b) to explain how we will apply a holding in *Boley v. Colvin*, 761 F.3d 803 (7th Cir. 2014), regarding judicial review of an ALJ's order finding no good cause for a late hearing request and dismissing the request as untimely.

An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

This AR explains how we will apply the holding in *Boley v. Colvin* to claims in which the claimant makes a late request for an ALJ hearing, the ALJ dismisses the hearing request and finds that the claimant lacked good cause for missing the appeal deadline, and then the claimant timely seeks review of the ALJ's dismissal by the Appeals Council (AC). We will apply this AR to all claims in the Seventh Circuit in which the AC denied a request for review of such a dismissal on or after March 14, 2016. If the AC denied a request for review of an ALJ dismissal between August 4, 2014 (the date of the Court of Appeals' decision) and March 14, 2016 (the effective date of this AR), the claimant may request that we apply the AR.

When we received this precedential Court of Appeals' decision and determined that an AR might be required, we began to identify those claims that were pending before the agency that might be subject to readjudication if we subsequently issued an AR. Because we have determined that an AR is required and are publishing this AR, we will send a notice to those individuals whose claims we have identified. In the notice, we will provide information about the AR and the claimant's rights under the AR. However, claimants may request that we apply this AR to their claims even if they did not receive a notice, as provided in 20 CFR 404.985(b)(2) and 416.1485(b)(2).

If we later rescind this AR as obsolete, we will publish a notice in the **Federal Register** to that effect, as provided in 20 CFR 404.985(e) and 416.1485(e). If we decide to relitigate the issue covered by

this AR, as provided by 20 CFR 404.985(c) and 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: March 3, 2016.

**Carolyn W. Colvin,**

*Acting Commissioner of Social Security.*

### ACQUIESCENCE RULING 16-1(7)

*Boley v. Colvin*, 761 F.3d 803 (7th Cir. 2014): *Judicial Review of an Administrative Law Judge's Order Finding No Good Cause for a Late Hearing Request and Dismissing the Request as Untimely—Titles II and XVI of the Social Security Act.*

**ISSUE:** May a claimant obtain judicial review of an administrative law judge (ALJ)'s order finding no good cause for a late hearing request and dismissing the request as untimely?

**STATUTE/REGULATION/RULING CITATION:** Sections 205(g) and 1631(c)(3) of the Social Security Act (42 U.S.C. 405(g), 1383(c)(3)); 20 CFR 404.900(a), 404.901, 404.903(j), 404.933(b)–(c), 404.955, 404.957, 404.959, 416.1400(a), 416.1401, 416.1403(a)(8), 416.1433(b)–(c), 416.1455, 416.1457, 416.1459.

**CIRCUIT:** Seventh (Illinois, Indiana, Wisconsin).

**APPLICABILITY OF RULING:** This ruling applies to claims in which a claimant resides in a State within the Seventh Circuit and in which an ALJ entered an order finding no good cause for a late hearing request, the ALJ dismissed the request as untimely, the claimant requested review by the Appeals Council (AC), and the AC denied review.

**DESCRIPTION OF CASE:** Marilyn Boley filed a claim for disability insurance benefits. We denied her claim at the initial and reconsideration levels of administrative review. Although she was represented by an attorney at the time we denied her request for reconsideration, we sent notice of the reconsidered determination to Ms. Boley, but not to her attorney. After learning that we had denied Ms. Boley's request for reconsideration, the attorney requested a hearing. An ALJ dismissed that request as untimely because the regulations at 20 CFR 404.933(b) and 416.1433(b) require a claimant to request a hearing within 60 days of the claimant's receipt of a reconsidered

determination. While regulations allow the ALJ to extend the time for requesting a hearing when a claimant has “good cause” for the late request, the ALJ ruled that Ms. Boley lacked good cause because she had received the reconsideration notice and could have filed a hearing request herself. Ms. Boley filed a timely request for review of the ALJ’s dismissal order with the AC. When the AC denied her request for review of the ALJ’s dismissal order, Ms. Boley sought judicial review.

**HOLDING:** The United States Court of Appeals for the Seventh Circuit concluded that a claimant for Social Security benefits may obtain judicial review of an ALJ’s dismissal order finding no good cause for a late hearing request after exhausting all available administrative remedies.

**STATEMENT AS TO HOW BOLEY DIFFERS FROM THE AGENCY’S POLICY:**

Unlike the holding in *Boley*, our policy provides that an ALJ’s order finding no good cause for a late hearing request and dismissing the request as untimely is not subject to judicial review. Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), “clearly limits judicial review to a particular type of agency action, a ‘final decision of the [Commissioner of Social Security] made after a hearing.’” *Califano v. Sanders*, 430 U.S. 99, 108 (1977). The Supreme Court has also recognized that “the term ‘final decision’ is left undefined by the Act and its meaning is to be fleshed out by the [Commissioner’s] regulations.” *Weinberger v. Salfi*, 422 U.S. 749, 751 (1975).

Under our regulations, the claimant must first obtain an “initial determination” and then complete an administrative review process consisting of several steps, “which usually must be requested within certain time periods,” 20 CFR 404.900(a), 416.1400(a), before obtaining a judicially reviewable “decision.” Not all agency actions constitute “initial determinations” subject to the administrative review process and, ultimately, judicial review. 20 CFR 404.903, 416.1403(a) (identifying numerous administrative actions that are not initial determinations). For example, although we will extend the time to seek a hearing upon a showing of good cause, 20 CFR 404.933(c), 416.1433(c), an administrative action denying a request to extend a time period is not an initial determination subject to the administrative review process or judicial review. 20 CFR 404.903(j), 416.1403(a)(8).

Further, our regulations provide that a “decision” means “the decision made by the administrative law judge or the Appeals Council.” 20 CFR 404.901, 416.1401. Of direct relevance here, the regulations distinguish between an ALJ’s “decision” and an ALJ’s dismissal of a claimant’s request for a hearing. An ALJ’s decision is subject to review by the agency’s AC and ultimately may be subject to judicial review. 20 CFR 404.955, 416.1455. An ALJ’s dismissal of a hearing request, 20 CFR 404.957, 416.1457, on the other hand, is not a “decision” within the meaning of section 205(g) of the Act. Rather, it is binding unless vacated by an ALJ or the AC, and the dismissal of a hearing request is not subject to judicial review. 20 CFR 404.959, 416.1459.

**EXPLANATION OF HOW WE WILL APPLY THE BOLEY DECISION WITHIN THE CIRCUIT:**

This Ruling applies only to claims in which all the following criteria are met:

1. The claimant did not timely request a hearing before an ALJ;
2. The ALJ dismissed the claimant’s request for a hearing;
3. The basis for the ALJ’s dismissal of the hearing request was that the claimant failed to show good cause for untimely filing of the hearing request;
4. The claimant timely filed a request for the AC to review the ALJ’s dismissal of the hearing request;
5. The AC denied the claimant’s request for review; *and*
6. The claimant resided in Indiana, Illinois, or Wisconsin at the time the AC denied review.

If a case meets these criteria, we will send notice explaining that the claimant may appeal the dismissal to the Federal district court for the judicial district in Illinois, Indiana, or Wisconsin in which the claimant resides.

[FR Doc. 2016–05663 Filed 3–11–16; 8:45 am]

**BILLING CODE 4191–02–P**

**SOCIAL SECURITY ADMINISTRATION**

[Docket No. SSA–2015–0038]

**Social Security Ruling, SSR 16–2p; Titles II and XVI: Evaluation of Claims Involving Similar Fault in the Providing of Evidence**

**AGENCY:** Social Security Administration.  
**ACTION:** Notice of Social Security Ruling (SSR).

**SUMMARY:** In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of SSR 16–2p. This Ruling supersedes and replaces previously published SSR 00–2p. It provides the definition of fraud, and

clarifies the definitions of knowingly and preponderance of the evidence. The Ruling also clarifies that we may find that any individual or entity has committed fraud or similar fault, and that we may disregard evidence submitted by any individual or entity that we find has committed fraud or similar fault. In addition, the Ruling provides examples of such individuals and entities.

**DATES:** *Effective Date:* March 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Dan O’Brien, Director of Office of Vocational Evaluation and Process Policy in the Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1632 or TTY 410–966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

**SUPPLEMENTARY INFORMATION:** Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this SSR in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we convey to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner’s decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are binding as precedents in adjudicating cases.

This SSR will remain in effect until we publish a notice in the **Federal Register** that rescinds it, or we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)