

**NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES
(NOSSCR)**

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Via regulations.gov, Docket ID No. SSA-2019-0026

August 23, 2019

Dear Ms. Sipple,

Thank you for the opportunity to comment on the Request for Hearing by Administrative Law Judge (i501) and Request for Reconsideration (i561) online forms. In response to a request for the clearance packages for these information collections, SSA also sent screenshots of the online system for non-medical appeals and our comments on those are included at the end of this letter.

General Discussion: i501 and i561

The Federal Register notice indicates the average burden per response for the i501 and i561 is five minutes. This is a severe underestimate. The information collections themselves say in their “Getting Ready” section that **“This appeal may take 60 minutes or longer to complete.”** The information collections require respondents to read and input at least six screens of background and identifying information (including the claimant’s contact information, information about another person SSA can contact for information, the date on the notice SSA sent the claimant, and the claimant’s reason for appealing the denial) and approximately 15 screens about the claimant’s medical treatment and activities/training (including inputting the names and contact information of all treating providers and hospitals; the names, reasons, and side effects for all prescription and non-prescription medication; information in changes to activities the claimant is able to perform; a release of medical information, and other information requests). Given the fact that disability claimants are more likely than the general population to have low literacy, intellectual disabilities, memory loss, deficits in concentration and persistence, and lengthy

medical histories, their burden in completing this form is probably even greater than the 60 minutes SSA indicates.

Interestingly, despite the paper versions of these forms being much shorter (because they do not include questions about medical treatment or activities/training), SSA estimates the paper forms will take twice as long (10 minutes) to complete.

SSA does not need all of this information; in fact, requiring it is contrary to the agency's own regulations about what information is required to request reconsideration or an ALJ hearing, as indicated in the table below.

	Request for Reconsideration (i561)	Request for ALJ Hearing (i501)
Title II benefits	20 CFR 404.909: "a written request"	20 CFR 404.933: "You may request a hearing by filing a written request. You should include in your request— (1) The name and social security number of the wage earner; (2) The reasons you disagree with the previous determination or decision; (3) A statement of additional evidence to be submitted and the date you will submit it; and (4) The name and address of any designated representative."
Title XVI benefits	20 CFR 416.1409: "a written request"	20 CFR 416.1433: "You may request a hearing by filing a written request. You should include in your request— (1) Your name and social security number; (2) The name and social security number of your spouse, if any; (3) The reasons you disagree with the previous determination or decision; (4) A statement of additional evidence to be submitted and the date you will submit it; and (5) The name and address of any designated representative."

Although additional information about the claimant's medical treatment, medications, new functional limitations, activities, education, and training may have practical utility, it should not be required to request reconsideration or an ALJ hearing. Respondents using the i561 and i501 should be able to submit only the regulatorily required information (essentially, what is required by the paper SSA-561 and HA-501 forms) and then have the option to electronically submit additional information and related documentation if they would like. Shortening the amount of information required before submitting the appeal would enhance the utility and clarity of the information collection for, and reduce the burden on, respondents. This is especially important

because of the severe physical and mental impairments many respondents experience, which can limit their physical and mental abilities to type, concentrate, and remember. It is also important because of the vital nature of the information collection: disability claimants who are denied benefits and who do not appeal will not receive the monetary benefits and related health insurance they could obtain after a successful request for reconsideration or ALJ hearing.

Simplifying the i501 and i561 to include only the information required by regulation and then allowing respondents to submit additional information either simultaneously or at a later time would be useful for respondents appealing close to SSA's 60-day deadline. Being able to submit only the information required by SSA's regulations would reduce the number of late appeals, which must be done on paper and require an assessment by SSA staff as to whether there is "good cause" for submission after the deadline. Reducing this workload by making it easier to file timely appeals would be more efficient for SSA.

SSA has been aware for many years that its i501 and i561 systems do not comply with agency regulations. In 2018, the agency agreed to process 61,277 of what it calls "abandoned iAppeals": claims where the respondent submitted all information required by regulation but left the information collection before submitting additional information about their medical treatment and activities. As of July 30, 2019, there were 5,088 "abandoned" iAppeals where an ALJ had issued a decision, and 2,318 (46%) were favorable. SSA has not released statistics on the outcomes of cases sent to state agencies, or on the number of claimants who died before their claims were processed.

SSA plans to send another batch of 52,228 "abandoned" iAppeals for processing later this year, meaning a total of over 113,000 regulatorily-compliant appeals were not promptly processed. This delayed or deprived several thousand people of benefits for which they qualified.

SSA's proposed changes to the information collection do not create a regulatorily-compliant electronic appeals process. By amending the terms of service section and asking claimants to supply pages of information about their doctors, hospitalizations, tests, medications, limitations, and education¹ before submitting their appeals, the agency is simply providing more information about its regulatorily non-compliant process. Although the recently released Social Security Ruling 19-3p explains the difference in information required by the electronic and paper appeals process, it is not reasonable to expect a claimant—especially an unrepresented claimant—to be aware of this subregulatory guidance. The i501 and i561 should explain that a paper process exists, provide a link to the pdf version of the appropriate paper form, and explain how the paper form can be submitted. This would still not make the electronic process compliant with regulations, but would better inform claimants about their options.

Specific comments about i501 and i5061 screenshots

In the "Follow-up" section on page 1 of each set of screenshots, the words "information" and "question" are misspelled. The text also switches from second person to third person ("After you

¹ Or at least to read and move through those screens: the screenshots provided do not indicate which, if any, fields are required.

are finished....The claimant can log in”), which is confusing. It would be useful to provide a link to create or access a My Social Security account.

Where the information collection says “SSA needs the following Information to complete an electronic appeal” (pp.3-4 of i501 and pp. 2-3 of i561 screenshots) it is unclear whether this includes only the “claimant’s information” and “third party information” or also the “medical information.” As discussed above, SSA’s regulations are clear on what is required for an appeal to be processed and the terms of service should not list, nor should SSA require, information that goes beyond the regulations in order for the appeal to be processed.

Similarly, medical information should not be listed in the checklist (p.57 of i501 and p.56 of i561 screenshots) as “information you need to complete your disability appeal” because it is not required by regulation. If a claimant submits identifying information and no medical information, SSA should still process the appeal and issue a decision. The decision is perhaps more likely to be a denial if no additional medical information is provided, and SSA should explain this to claimants and encourage them to submit any evidence they have after submitting their appeal (either during the same electronic session or by using the re-entry number at another time), but claimants should not be made to think that they can only appeal if they have lists of their medications, providers, visit dates, treatments, etc. People leaving incarceration, experiencing homelessness, with memory loss or low literacy, or who have not received treatment for their conditions are all less likely to have this medical information and yet are still entitled to have their appeals processed. It would be more appropriate to list medical information as “optional” or “supporting information.” Additionally, the numbering in this screen is inaccurate; it includes two sections labeled “2.”

The screenshots also do not explain which, if any, of the fields in the “medical” or “activities/training” are mandatory. Since the regulations do not require this information for appeal, none of these fields should be required, and each screen should explain that all fields are optional and can be left blank.

The re-entry number screen does not, but should, explain that there is a deadline for returning to complete the additional pages of the i561 or i501 form. Given that claimants are required to submit the date of their denial, it should be possible to calculate and show the deadline (60 days plus 5 for mailing time). This page should also explain that if a claimant does not complete the additional pages by the deadline, that it is still possible to make a late hearing request if good cause exists, and describe how a claimant can make such a request and how to make a “good cause” statement.

When explaining why the form is asking about gender (p.12 of i501 and p.11 of i561 screenshots), it might be useful to provide an example “(for example, ‘what is the date on the notice HE received’ or ‘what is the date on the notice SHE received’)” so people don’t think there are different questions asked for people of different genders.

Non-medical Appeals Screen Package Document

1.4: Says “Information about the Applicant/The information collected here refers to the person submitting the appeal.” It would be clearer for the first line to say “Information about the Applicant or Beneficiary” because someone might file a non-medical appeal after already receiving benefits—for example, if they are a current beneficiary appealing an overpayment. It would also be clearer for the second line to say “The information collected here refers to the person whose denial is being appealed” because a parent might be submitting the appeal on behalf of their child, or a representative payee or other representative might be submitting on behalf of their client.

1.5.1.1: Given that people may have filed multiple claims or appeals throughout the years, “I’m appealing this issue for the first time” or “I’ve already appealed this issue once but was denied” may be less clear than “I was denied and now am requesting reconsideration” and “My request for reconsideration was denied and I am now requesting review by an Administrative Law Judge.”

1.10.1.1: As discussed above, when explaining why the form is asking about gender, it might be useful to provide an example “(for example, ‘what is the date on the notice HE received’ or ‘what is the date on the notice SHE received’)” so people don’t think there are different questions asked for people of different genders.

Conclusion

Thank you for your consideration of these comments. We would be happy to discuss them further with you if that would be of assistance.

Sincerely,

Stacy Cloyd
Deputy Director of Government Affairs
National Organization of Social Security Claimants’ Representatives (NOSSCR)