



SSI/SSDI Outreach, Access and Recovery

for people who are homeless

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Effective SOAR Representation for Social Security Appeals

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Despite your best efforts as a SOAR (SSI/SSDI Outreach, Access and Recovery) practitioner, your applications for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) are sometimes denied. Or, perhaps you are involved with an applicant whose appeal is already pending with the Social Security Administration (SSA). SOAR practitioners are often well positioned to assist with Social Security appeals given their relationships with applicants and knowledge of their impairments and related functional limitations.

When an application for Social Security benefits is denied, SSA sends the applicant a denial notice or letter with an explanation of the decision and information about the right to appeal. The decision to file an appeal must be carefully considered. Knowing whether to continue the current claim with an appeal or to file a new application is crucial. This issue brief provides basic information and practical tips on assisting with appeals for applicants who have been denied at the initial application level.

SSA Appeal Levels

Four levels of appeal are available to SSA disability claimants in most states. Below is a brief description of each. Figure 1 shows the proportion of claims allowed at each decision point from initial application through Federal district court for claims filed in 2013.¹

1. **Reconsideration.** The first step in the appeals process, available in most states,² is a request for reconsideration. This review is conducted by the Disability Determination Services (DDS). For many applicants who come to SOAR practitioners after their initial application has

been denied, the SOAR practitioner can request reconsideration and take many of the same steps to develop the applicant's case as he or she would for an initial application.

2. **Administrative Law Judge (ALJ) Hearing.** Applicants denied at the reconsideration level (or those denied on initial application in states that do not offer reconsideration) receive written notice from SSA with information about how to file an appeal to request a hearing before an ALJ at the Office of Disability Adjudication and Review (ODAR).
3. **Appeals Council Review.** If a claim is denied by an ALJ, the final SSA administrative appeal is the Appeals Council (AC). Non-attorneys may file the appeal and associated brief. The AC can affirm, modify, or reverse the ALJ's decision or remand (return) the case to the original ALJ for another review.
4. **Federal District Court Review.** An unfavorable decision by the AC can be appealed to federal district court.³

For each level of appeal, the claimant has 60 days from the date of the denial notice to file a request for the next level of appeal. An additional 5 days are provided for mailing, meaning that requests must be filed not later than 65 days after the date of the prior decision notification.⁴

SOAR Success with Appeals

Many SOAR programs have had good results assisting applicants with appeals – particularly at the reconsideration and ALJ hearing levels. Since 2010, 38 states and the District of Columbia reported

Figure 1. 2012 and 2013 National SSA Disability Application Outcomes¹

Stage	Percent (%) Allowed (2013)	Percent (%) Appealed to Next Level (2012)	Average Decision Time (2012)	Appeal Request Deadline (2012)	Type of Review
Initial Applications ↓	33%	47%	110 days	60 days	Paper file review
DDS Reconsideration ↓	11%	65%	90 days	60 days	Paper file review
ALJ Hearing ↓	48%	66%	353 days	60 days	Paper file review and/or in-person or video conference
Appeals Council ↓	1% Reversed 17% Remanded	45%	370 days	60 days	Paper file review
Federal Court	2% Reversed 42% Remanded	18%	540 days	NA	In-person testimony

using SOAR to assist with more than 5,800 appeals, winning approvals for more than 3,000 (53 percent) of all cases.⁵ In deciding whether to represent applicants at levels other than initial applications, SOAR practitioners must consider

- Am I going to represent applicants after an initial denial?
- If not, how will I ensure that the applicant’s appeal rights are protected?
- If yes, do I have sufficient resources (primarily staff time) to assist with appeals?

SOAR practitioners who are successful with appeals focus their efforts on obtaining medical documentation that addresses the Listings and that accurately describes the applicant’s functional limitations. Most submit a medical summary report (MSR), a SOAR critical component that can establish a legal foundation for the case. The MSR answers these questions: why is the applicant disabled and what evidence is there to support this?

Why Some Claims Are Denied

An emphasis on gathering and submitting medical evidence as part of a complete SOAR application packet is a major factor in the success of SOAR-assisted initial applications. However, SOAR practitioners are sometimes unable to obtain all medical records due to

circumstances beyond their control. For example, there is no requirement that a medical provider turn over records within a set time period. Other reasons why evidence may not be submitted earlier include

- DDS does not always use questionnaires or forms that are tailored to the applicant’s specific type of impairment or ask for information that addresses SSA’s disability standard.
- SSA or DDS may not explain to the applicant or provider what evidence is important or necessary to make a decision.
- Applicants and providers are unable to obtain records due to either cost or access restrictions, including confusion over HIPAA requirements.
- A medical provider does not comply with a request to submit evidence because, for example, the request is not detailed enough or a different release form is required.

Other reasons for denials include the fact that some conditions, such as mental impairments, may take longer to diagnose definitively. In other cases, an applicant may be unable to accurately articulate his or her impairments and limitations, either because the applicant is in denial; lacks judgment; does not understand his or her disability; or because his or her impairment(s), by definition, make this a very difficult task.

Making the Decision to Appeal

Requesting reconsideration or filing an appeal at the ALJ level is almost always a good idea because SOAR reconsiderations and appeals are highly successful. Approximately two-thirds of all SOAR reconsiderations result in a favorable decision. Successful appeals also allow claimants to collect retroactive cash benefits and medical coverage. Applicants who decide to appeal may need assistance finding an attorney or non-attorney to represent

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them at the hearing. Representation at hearings is encouraged. There is simply too much at stake for applicants to attend a hearing without representation.

Many applicants, unaware that building a case can be time-consuming, seek representation shortly before, or even after, the ALJ hearing. Many do not understand the complexity of the rules or the importance of being represented. Many are overwhelmed by other demands and priorities in their lives and by their chronic illnesses.

SOAR practitioners can file the hearing request and represent applicants at ALJ hearings if they feel comfortable doing so. It is very important that applicants understand their rights to have representation at the ALJ hearing. SOAR practitioners who choose not to provide representation for appeals can help the applicant find a lawyer or legal service program, accompany him or her to the first interview, assist with gathering needed documentation, and continue communication if needed.⁶

Filing a Request for Reconsideration

In all but 10 states, claimants who are denied at the initial level can file for reconsideration. The reconsideration level is nothing to fear. Rather, it is an opportunity to present new or previously missing information that may impact a claim. For example, since the initial claim was filed, the applicant's medical

condition may have worsened and diagnoses may have changed or been added. The applicant may have undergone new treatment, been hospitalized, or been referred to different doctors.

During reconsideration, SSA takes an entirely new look at the case and makes a new determination on a person's disability. The process is almost identical to the initial level, with one major difference — the disability adjudicator and state agency doctor are not the same as those who made the initial disability determination.

To request reconsideration, a Request for Reconsideration form (SSA-561) must be received by SSA no later than 65 days from the date of the denial notice.⁷ Two other forms must be completed: the Disability Report - Appeal (SSA-3441) and an Authorization to Disclose Information (SSA-827). All forms may be submitted online, which SSA prefers, but only the short Request for Reconsideration form needs to be filed by the deadline.

If the Request for Reconsideration is delivered by hand or sent via certified mail to the SSA field or district office, the SOAR practitioner should get a receipt as proof of timely filing.⁸ If there is any question as to whether the request will meet the deadline, assist the applicant with filing online or immediately help the claimant visit the local SSA office. At the local office, the request can be completed and the applicant will be given a copy that shows that it was filed on time. A SOAR practitioner can submit the appeal on the applicant's behalf, even in their absence, as long as the SSA-1696 (Appointment of Representative form) is on file and not older than one year.⁹

Completing the Disability Report - Appeal

Many applicants come to SOAR programs after their initial application has been submitted. In many cases, these applicants will be denied. But the SOAR practitioner can take many of the same steps to develop the claim at the Reconsideration level that he or she would have taken had the applicant sought assistance earlier. This is particularly true when it comes to completing the Disability Report - Appeal (SSA-3441). This report asks for information about any new doctors or hospitalizations and about any changes in the applicant's medical condition. The more information provided in the Disability Report - Appeal, the greater the chance for reversing the initial decision.

A good place to start is to review the denial letter to determine why the claim was denied. If a denial letter says, “claim denied for insufficient evidence,” then you know medical documentation is needed.

Try to figure out the step of the sequential evaluation process at which the denial was issued. For example, if the denial notice says, “unable to return to past work, but can do simple, low stress work,” you have a Step 5 denial. If you can figure out why SSA denied benefits, you can focus on providing information that addresses the specific issues at hand.

Request a copy of the claimant’s file. It is available on CD upon request to appointed representatives. Look for problem areas and opportunities to make the case stronger. Support the claim by submitting additional medical and lay evidence.

Filing a Request for a Hearing before an Administrative Law Judge

If you disagree with the reconsideration decision or if you are in a state that does not have the option of reconsideration, you may ask for a hearing before an ALJ in the ODAR. The hearing will be conducted by an ALJ who had no part in the original decision or the reconsideration of the case and is usually held within 75 miles of where the applicant lives.¹⁰

The ALJ will notify the applicant and his or her representative of the time and place of the hearing. Before the hearing, the ALJ may ask for more evidence or clarification regarding the claim. It is important to request a copy of the applicant’s file, review it for inconsistencies or missing information, and gather new information that may be available. At the hearing, the ALJ will question the applicant, any witnesses and the applicant’s representative as he or she deems necessary. In certain situations, the hearing may be held by video conference rather than in person, but if this is the case, arrangements and notification will be made in advance. It is possible to object to a video hearing.¹¹

To request an ALJ hearing, a Request for Hearing by Administrative Law Judge form (HA-501) must be received by SSA no later than 65 days from the date of the denial notice.¹² Two other forms must be completed: the Disability Report - Appeal (SSA-3441) and an Authorization to Disclose Information (SSA-

827). All forms may be submitted online, which SSA prefers, but only the short Request for Hearing by ALJ form needs to be filed by the deadline.

Hearings before an ALJ will result in a new decision. A critical difference from the earlier decisions is that the ALJ hearing is the first opportunity for the applicant to meet the person deciding his or her case face-to-face. This can be especially important in cases involving impairments like mental illness, trauma, and pain.

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During the appeal process, the record is open for new evidence to complete the record. This can make the critical difference between affirming or reversing the original determination made at DDS. It is important to be well versed in the specifics of the case — for example, being able to identify critical dates that the judge will need to evaluate the evidence, such as the date of last significant work.

It is also critical that whoever represents the applicant during the hearing understands SSA’s 5-step sequential evaluation process for determining disability.¹³ Although a hearing before an ALJ is a non-adversarial process, the court still finds that the burden of evidence necessary to reverse a disability determination decision rests with the applicant and his or her representative.

Requesting an “On the Record” Decision

Once the Request for Hearing has been processed at ODAR, both the representative and applicant will receive a notice indicating the case has been successfully transferred to the court’s Master Docket. This may be the only notice the representative receives before receiving notice of the scheduled hearing date.

The Master Docket system contains key information on all cases the hearing office receives and cases are screened at this stage. Since not every request leads to a hearing, this is a good time for the SOAR practitioner to request an “on the record” (OTR) decision. An OTR request asks ODAR to consider approving a claim

Figure 2. Medical Vocation Guidelines or “The Grids”

Grid Factor	Underlying Assumptions
Age	The older you are, the less likely it is that you will be able to perform competitive work.
Education – Limited, High School	The less education you have, the less likely it is that you will be able to perform competitive work.
Skill Level (previous work experience) –Unskilled, Semi-skilled, Skilled	The less skill or work experience you have, the more likely that you will be found disabled.

based on the documentation in the record. Only the ALJ or Attorney Advisors at ODAR can make an OTR decision.¹⁴ However, if the ODAR office is not able to grant the request, the applicant retains the right to a hearing.¹⁵ The following are examples of when a SOAR practitioner would want to file an OTR:

- An applicant meets one of the Listings of Impairments.
- An applicant satisfies all requirements for a finding of disabled based on the Medical Vocations Guidelines (also known as the “Grids”; see Figure 2).¹⁶
- The evidence is clear that an applicant could not do past relevant work or other work existing in significant numbers in the economy (Step 5 cases).
- This is a critical (dire need) case.¹⁷

SOAR practitioners who handle SSI/SSDI claims at the hearing level can do their applicants a great service by submitting a properly documented OTR request when appropriate. Successful OTR requests have several important benefits:

- OTR decisions save applicants long waits for hearings and decisions, accelerating access to cash and medical benefits.
- SOAR practitioners save hours of work when they do not have to prepare for and attend a hearing.
- SOAR practitioners gain credibility with and gratitude from ALJs whose time is also saved when cases can be decided on the record.

A SOAR practitioner requesting an OTR review should notify or remind the hearing office that an applicant is in “dire need” (e.g., homeless, residing in shelter, eviction is pending), when applicable, being

sure to provide some proof of the applicant’s situation. It is usually in the applicant’s best interest to file the OTR request as soon as the appropriate supporting documents are gathered, including medical evidence from a treating source and any opinion evidence needed to document the claim. For SOAR applicants, this critical documentation would include an MSR adapted to add the listing that the applicant meets and discussion of evidence to support this conclusion.

SOAR practitioners who handle SSI/SSDI claims at the hearing level can do their applicants a great service by submitting a properly documented OTR request when appropriate.

Another good time to request a favorable OTR is at the time the hearing is scheduled. If the applicant is unrepresented, he or she may request a postponement at this time. The hearing office will advise the applicant of the right to representation and will provide a list of agencies that offer representation.

Writing an OTR Review Request

The OTR request is simply a letter stating the Listing section that the applicant meets followed by a discussion of how the specific requirements of the Listing are met. No official form is required. The letter is similar to an MSR that the SOAR practitioner develops for the initial application.

The OTR letter should link the claimant’s functioning to medical records and third party reports. It can be helpful to address some key issues, such as linking physical disability or illness to depression, if applicable. If drug or alcohol use is present, it is not always material. In these cases, it is important to make this clear, for instance, by discussing the persistence of

disabling conditions during periods of incarceration or hospitalization. Doctors and others can provide their opinion on materiality. It is important to briefly describe any trauma that caused subsequent Post-Traumatic Stress Disorder (PTSD) or anxiety, referring back to an MSR that may have been submitted with the original application or developed to accompany the OTR.

When the Applicant Cannot Be Located for His or Her Hearing

The ALJ decides who is necessary and proper for a hearing.¹⁸ If an applicant cannot be located, but the claim is ready for adjudication (e.g., it is the day of the hearing), the ALJ can declare the applicant a “non-essential witness” and proceed to a decision.¹⁹ If the decision is not fully favorable, the representative is able to proceed with an appeal, thus giving extra time to locate the applicant. If the decision is fully favorable, the actual payment of benefits will occur later, allowing time to locate the applicant.

Filing with the Appeals Council

If the deadline to file for an Appeals Council (AC) review has been missed or if the applicant disagrees with the ALJ hearing decision, the applicant or his/her representative may send a letter requesting a review by SSA’s AC.²⁰ The AC is the final level of administrative appeal within SSA. The purpose of the AC is to ensure

that the law, regulations, and binding policies of the SSA are followed and to promote consistent decision making among ALJs.

The AC may deny a request when it believes the hearing decision was correct. If the AC decides to review the case, it will either decide the case itself or remand it to the same ALJ who made the decision for further review. If the AC denies the request, SSA will send a letter explaining the denial. Either way, SSA will notify the claimant of the outcome of the decision.

Cases at the AC are typically reviewed by analysts who thoroughly understand SSA’s programs and laws. According to SSA reports, the AC is more likely to

Ask the applicant why he or she missed the deadline. SSA provides several examples of good cause that may fit the applicant’s circumstances.

reverse or remand the ALJ’s decision when legal errors have been made. As a result, only 1 percent of all AC cases result in a reversal of the ALJ decision and only 17 percent are remanded to the original ALJ for review (see Figure 1). When an applicant’s case is awaiting an AC decision, SOAR practitioners should advise the applicant that the time frame from filing AC appeal to a decision may be a year or longer.

Missing the Deadline to File an Appeal²³

The deadline for filing an appeal or request for reconsideration is generally 65 days. Ask the applicant why he or she missed the deadline. SSA may allow an applicant to file an appeal after this if he or she can prove “good cause” for missing the deadline.

Good cause may include failure to understand the requirements, failure to receive the denial notice within five days of the date on the notice, or “unusual or unavoidable circumstances” that prevented the claimant’s timely filing. SSA will also consider the fact that a late filing was related to the applicant’s disability, education or speech limitations (e.g., limited English proficiency).

“Good cause” is subject to SSA discretion and a finding of no good cause is generally not subject to appeal. Key points that SSA considers include the following:

- Reasonable doubts must be resolved in favor of the applicant.
- An extension must be granted so long as good cause exists.
- If no extension is granted, a new application may be filed using the date of the written request for review as a protective filing date.

Reopening a Previously Denied Claim²⁴

In some cases, SSA may reopen a previously denied claim, making a reconsideration or appeal unnecessary. Claims may be reopened at the applicant's request or SSA may decide on its own to do so when new and material evidence is presented. A request to reopen a claim should be made in writing, pointing out the new evidence.

SSI applicants may request the reopening of a prior claim within two years from date of the initial application. SSDI applicants may reopen within four years of the date of the initial application. If the applicant lacked the mental capacity to pursue an appeal at the time of the prior denial, SSA policy requires that the claim be reopened no matter how far back it may go. It is important for SOAR practitioners to be aware of this policy because obtaining new and material evidence to support a request to reopen a claim may be possible.

Reopening a claim can bring significant back benefits to applicants with mental and cognitive impairments. For example, an applicant with schizophrenia who met the Listing was unable to provide information about multiple hospital admissions when he first applied. With the help of a skilled SOAR practitioner, this information was able to be tracked down and a new application was filed. At SSA, the information submitted with the second application was considered new and material evidence and the original file was reopened.

Cases that are reversed or remanded at the AC typically meet one or more of the following conditions:

- There appears to be an abuse of discretion by the ALJ.
- There is an error of law.
- The actions, finding, or conclusion of the ALJ are not supported by substantial evidence.
- There is a broad policy or procedural issue that may affect the general public interest.
- If new and material evidence is submitted, the additional evidence has to relate to the period on or before the date of the ALJ hearing decision.²¹

Assisting with an appeal to an ALJ at the ODAR hearing office, however, is not for every SOAR practitioner. Should you decide to take this on, be sure you can represent the applicant well.

When deciding whether to pursue a claim to the AC, it is important to have someone with AC experience assess whether there is a good chance the case will be reversed or remanded. It might not be worth taking the case to the AC if a positive outcome is unlikely. This is especially true if the applicant's situation is one of dire need or clear disability. In these situations, filing a new application may be advisable, outweighing the loss of any retroactive benefits that may accrue by pursuing the case with the AC.

Filing a New Application

If the applicant has been denied at the ALJ hearing level, is not a good candidate for the AC, and is in dire need or very clearly disabled, a new application may be the best course of action. Changes to SSA regulations in July 2011 state that, in most cases, an applicant cannot have a new disability claim processed when another claim of the same type is pending at any level of administrative review. This rule also specifies the circumstances under which a new application will be processed despite the existence of another pending application.²²

Taking the Case to Federal Court

If the AC's decision is not favorable or if the AC decides not to review the case, a lawsuit can be filed in a federal district court. The letter SSA sends about the AC's action also explains how to ask a federal district court to look at the applicant's case.

Summary

SOAR practitioners who disagree with the initial disability determination decision should encourage the applicant to file an appeal. If reconsideration is an option, the SOAR practitioner can file a request for reconsideration and present evidence to support the request.

Assisting with an appeal to an ALJ at the ODAR hearing office, however, is not for every SOAR practitioner. Should you decide to take this on, be sure you can represent the applicant well. Otherwise, take the time to connect the applicant with someone who will represent him or her at the hearing and do what you can to assist in the development of evidence for the appeal.

Consider inviting local legal services to attend your SOAR meetings. Their expertise will help the SOAR practitioner better understand SSA rules and regulations through mentorship and potential representation for complicated appeals.

For More Information

If you would like more information on appeals, visit the SOAR website at <http://soarworks.prainc.com/topics/appeals> or email a member of the SOAR staff at soar@prainc.com.

Endnotes

1. SSA Data Sources: <http://www.ssa.gov/budget/FY15Files/2015LAE.pdf>, p.144; <http://www.ssa.gov/budget/FY14Files/2014BO.pdf> p.10
2. The reconsideration step is not available in Alabama, Alaska, California (Los Angeles North and Los Angeles West Branches only), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania. In these states, the first step in the appeals process is to file a request for a hearing.
3. Applicants who are unsuccessful in Federal district court may appeal to the Circuit Court of Appeals and to the U.S. Supreme Court.
4. Time Limits for Filing Appeals <http://policy.ssa.gov/poms.nsf/lnx/0203101010>
5. 2013 SOAR Outcomes- <http://soarworks.prainc.com/article/2013-national-soar-outcomes>
6. The SOAR practitioner should help the applicant obtain legal representation if not continuing with appeal. Each state has a Lawyers Referral Service which is a public service that provides referrals to individuals needing qualified, prescreened lawyers. Other helpful resources are State and County Bar Associations (both paid and pro bono options), Law School legal clinics and local legal services programs.
7. Request for Reconsideration- <http://policy.ssa.gov/poms.nsf/lnx/0504020020>
8. Copies of SSA-561 (Request for Reconsideration) can be found at <http://www.ssa.gov/online/ssa-561.pdf>
9. Copies of SSA-1696 (Appointment of Representative) can be found at <http://www.ssa.gov/online/ssa-1696.html>

10. Time and Place for Hearings- <http://ssa.gov/OP/Home/cfr20/404/404-0936.htm> , <http://policy.ssa.gov/poms.nsf/lnx/0203103050>
11. Video Hearing- http://www.ssa.gov/OP_Home/hallex/I-02/I-2-3-10.html
12. Copies of HA-501 (Request for Hearing) may be found at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0504030020>
13. SSA Sequential Evaluation- <http://www.ssa.gov/dibplan/dqualify5.htm> and http://www.socialsecurity.gov/OP_Home/cfr20/404/404-1520.htm
14. SSA's Senior Attorney Advisor Initiative was implemented in 2007 to reduce hearing backlog by expediting certain claims. The program was extended to August 7, 2015. See http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0942.htm and <http://www.federalregister.com/Browse/Document/usa/na/fr/2013/7/29/2013-18145>
15. 20 CFR§404.942- http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0942.htm; 20 CFR §416.1442: http://www.ssa.gov/OP_Home/cfr20/416/416-1442.htm
16. Medical-Vocational Guidelines (Grids)- http://www.ssa.gov/OP_Home/cfr20/404/404-app-p02.htm and <https://secure.ssa.gov/apps10/poms.nsf/lnx/0425001001>
17. Each hearing office is expected to have someone responsible for handling critical cases. Many SOAR applicants would meet the requirement of a dire need situation (e.g., unable to obtain food, medicine, or shelter; insufficient income or resources to meet an immediate threat to health or safety; homelessness; expiration of shelter stay or imminent eviction or foreclosure with no means to remedy the situation or obtain shelter). See HALLEX §1-2-1-40.B.4 for more information. http://www.ssa.gov/OP_Home/hallex/I-02/I-2-1-40.html
18. Hearing Participants- http://ssa.gov/OP_Home/hallex/I-02/I-2-6-52.html
19. 20 CFR §404.944 and §416.1444 and HALLEX I-2-601: http://ssa.gov/OP_Home/hallex/I-02/I-2-4-25.html; <https://secure.ssa.gov/poms.nsf/lnx/0203103010>
20. The current address for the AC is: The Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255
21. 20 CFR§416.1470: http://www.socialsecurity.gov/OP_Home/cfr20/416/416-1470.htm
22. SSR- 11-p: http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR2011-01-di-01.html
23. Good Cause for Missing Deadline to Request Review: http://www.ssa.gov/OP_Home/hallex/I-02/I-2-9-40.html and https://www.socialsecurity.gov/OP_Home/rulings/oasi/33/SSR91-05-oasi-33.html
24. Reopening Previously Denied Claim: <https://secure.ssa.gov/poms.nsf/lnx/0427501005>; http://www.ssa.gov/OP_Home/hallex/I-02/I-2-9-40.html and http://ssa.gov/OP_Home/cfr20/404/404-0988.htm