4191-02U

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2016-0029]

Social Security Ruling 17-1p

Titles II and XVI: Reopening Based On Error On The Face Of The Evidence—Effect Of

A Decision By The Supreme Court Of The United States Finding A Law That We

Applied To Be Unconstitutional

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are giving notice of SSR 17-1p. This SSR explains how we apply our

reopening rules when we have applied a Federal or State law to a claim for benefits that

the Supreme Court of the United States later determines to be unconstitutional, and we

find the application of that law was material to our determination or decision. We expect

that this ruling will clarify our policy in light of recent questions that we have received on

this issue.

EFFECTIVE DATE: [INSERT DATE OF PUBLICATION IN THE FEDERAL

REGISTER].

FOR FURTHER INFORMATION CONTACT: Peter Smith, Office of Income Security

Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD

21235-6401, (410) 966-3235. 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 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so under 20 CFR 402.35(b)(1).

Through SSRs, we make available 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. 20 CFR 402.35(b)(1).

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, Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004—Social Security—Survivors Insurance; 96.006 Supplemental Security Income.)

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Nancy A. Berryhill,
Acting Commissioner of Social Security.

POLICY INTERPRETATION RULING

SSR 17-1p:

TITLES II AND XVI: REOPENING BASED ON ERROR ON THE FACE OF THE
EVIDENCE—EFFECT OF A DECISION BY THE SUPREME COURT OF THE
UNITED STATES FINDING A LAW THAT WE APPLIED TO BE
UNCONSTITUTIONAL

PURPOSE: In recent years, we have received a number of questions regarding how our
reopening rules should be applied when we applied a Federal or State law in making our
determination or decision, and the Supreme Court of the United States later determines
that the law we applied is unconstitutional. The issue has arisen most recently in light of
the Supreme Court's decisions regarding the constitutionality of the Defense of Marriage
Act in United States v. Windsor, 133 S. Ct. 2675 (2013) and the constitutionality of State
law bans on same-sex marriage in Obergefell v. Hodges, 135 S. Ct. 2584 (2015). We are
issuing this SSR to explain our policy on reopening a determination or decision due to an
error on the face of the evidence when, in making that determination or decision, we
applied a Federal or State law that the Supreme Court of the United States later
determines to be unconstitutional, and we find that application of that law was material to
our determination or decision.

CITATIONS: Sections 702(a)(5) of the Social Security Act, as amended; 20 CFR
404.988, 404.989, 416.1488, 416.1489.

BACKGROUND: Generally, if a claimant is dissatisfied with a determination or decision made in the administrative review process, but does not request further review within the stated time period, he or she loses the right to further review and that determination or decision becomes final.[1] However, under our rules of administrative finality, in limited circumstances, either on our own initiative or at the request of a party, we may reopen and revise a determination or decision that is otherwise final.[2] Our regulations set out the grounds for reopening and the timeframes for doing so. In many cases, we may reopen and revise a determination or decision only within specified time limits for "good cause."[3] In other cases, there are no regulatory time limits for reopening.[4] Under our regulations, we may find "good cause" to reopen in part when we find that there is an error on the face of the evidence, as described in the relevant regulations.[5]

Our regulations do not further specify what constitutes grounds for reopening a determination or decision based on an "error on the face of the evidence." Under our

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[1] 20 CFR 404.987(a), 416.1487(a).

[2] 20 CFR 404.987(b), 416.1487(b).

[3] See e.g., 20 CFR 404.988(b), 416.1488(b).

[4] 20 CFR 404.988(c)(8) (Under title II, we may reopen a determination or decision at any time if it was fully or partially unfavorable to a party to correct "an error that appears on the face of the evidence that was considered when the determination or decision was made.")

[5] 20 CFR 404.989(a)(3) (Under title II, we may reopen a determination or decision for good cause within four years of the date of the notice of initial determination when the "evidence that was considered in making the determination or decision clearly shows on its face that an error was made."), 416.1489(a)(3) (Under title XVI, we may reopen a determination or decision for good cause within two years of the date of the notice of initial determination when the "evidence that was considered in making the determination or decision clearly shows on its face that an error was made.")

longstanding policy, a legal error may constitute an error on the face of the evidence.[6]
However, our regulations also explain that we will not find "good cause" to reopen a
prior determination or decision based solely on a "change of legal interpretation or
administrative ruling upon which the determination or decision was made."[7]

In recent years, we have received questions about whether and how we may apply
our reopening rules when we made a determination or decision by applying a Federal or
State law that the Supreme Court of the United States later determines to be
unconstitutional. We are issuing this SSR to explain how we interpret the reopening rules
in this specific situation to ensure that our adjudicators interpret and apply our reopening
rules correctly and consistently.

POLICY INTERPRETATION: When we make a determination or decision by applying
a Federal or State law that the Supreme Court of the United States later determines to be
unconstitutional, and we find that application of that law was material[8] to our
determination or decision, we may reopen the determination or decision within the time
frames specified in our regulations based on an error on the face of the evidence under
20 CFR 404.988(b), 404.988(c)(8), 404.989(a)(3), 416.1488(b), and 416.1489(a)(3). In

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[6] Social Security Ruling 85-6c (https://www.ssa.gov/OP_Home/rulings/di/05/SSR85-06-di-05.html).

[7] 20 CFR 404.989(b), 416.1489(b).

[8] For purposes of this Ruling, this type of error on the face of the evidence is "material" to our determination or decision when our application of a Federal or State law that the Supreme Court of the United States later determines to be unconstitutional affected the individual's entitlement to title II benefits, the individual's eligibility for title XVI payments, or the amount of the individual's title II benefits or title XVI payments.

this specific situation, we do not consider a holding by the Supreme Court that a Federal or State law is unconstitutional to be a "change of legal interpretation or administrative ruling upon which the determination or decision was made," as contemplated in 20 CFR 404.989(b) and 416.1489(b).

Under our policy, the rules governing a change in legal interpretation apply when a policy or legal precedent that we previously adhered to in the adjudication of cases, which was correct and reasonable when made, is changed as a result of subsequent court decisions or other applicable legal precedents or new policy considerations.[9] When we have made a determination or decision by applying a Federal or State law that the Supreme Court of the United States later determines to be unconstitutional, the application of that law would not have been correct and reasonable when made. Consequently, we do not interpret the change in legal interpretation criteria in our rules to prevent us from applying our reopening rules in that specific situation. Accordingly, we may reopen a determination or decision based on an error on the face of the evidence in the limited circumstance where all of the following criteria are met: 1) we made our determination or decision by applying a Federal or State law that the Supreme Court of the United States later determines to be unconstitutional; 2) we find that the application of that law was material to our determination or decision; and 3) we reopen and revise the determination or decision within the following time frames:

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[9] See Program Operations Manual System GN 04001.100A
(https://secure.ssa.gov/apps10/poms.nsf/lnx/0204001100).

- For claims under title II of the Social Security Act (Act), within four years of the notice of the initial determination, for good cause, under 20 CFR 404.988(b), 404.989(a)(3);

- For claims under title II of the Act, at any time, if the determination or decision was fully or partially unfavorable, under 20 CFR 404.988(c)(8); and

- For claims under title XVI of the Act, within two years of the notice of the initial determination, for good cause, under 20 CFR 416.1488(b), 416.1489(a)(3).

CROSS REFERENCES: Social Security Ruling 85-6c; Program Operations Manual System GN 04001.100A, GN 04010.020, GN 04020.080.

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