



SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2019-0001]

Social Security Ruling 19-1p

TITLES II AND XVI: EFFECT OF THE DECISION IN *LUCIA V. SECURITIES AND EXCHANGE COMMISSION (SEC)* ON CASES PENDING AT THE APPEALS COUNCIL

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: We are giving notice of SSR 19-1p. This ruling explains how we will adjudicate cases pending at the Appeals Council in which the claimant has raised a timely challenge to the appointment of an administrative law judge (ALJ) under the Appointments Clause of the United States Constitution in light of the Supreme Court's recent 2018 decision in *Lucia v. SEC*.

DATES: We will apply this notice on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Nancy Chung, Office of Appellate Operations, 5107 Leesburg Pike, Falls Church, Virginia (703) 605-7100. 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.)

Nancy Berryhill,
Acting Commissioner of Social Security.

POLICY INTERPRETATION RULING

SOCIAL SECURITY RULING (SSR) 19-1p

TITLES II AND XVI: EFFECT OF THE DECISION IN *LUCIA V. SECURITIES AND EXCHANGE COMMISSION* (SEC) ON CASES PENDING AT THE APPEALS COUNCIL

PURPOSE: This ruling explains how we will adjudicate cases pending at the Appeals Council in which the claimant has raised a timely challenge to the appointment of an administrative law judge (ALJ) under the Appointments Clause of the United States Constitution in light of the Supreme Court’s decision in *Lucia v. SEC*, 138 S. Ct. 2044 (2018).

CITATIONS: 20 CFR §§ 404.970, 404.976(b), 416.1470, and 416.1476(b).

BACKGROUND: In *Lucia*, the Supreme Court considered a challenge to the manner in which the SEC appointed its ALJs. The Supreme Court held that the SEC’s ALJs are “Officers of the United States” within the meaning of the Appointments Clause of the United States Constitution, Art. II, § 2, cl. 2.¹ As a result, the SEC’s ALJs should have been (but were not) appointed to their positions by either the President, a court of law, or the Department head. The Supreme Court reversed the lower court’s decision finding that the SEC’s ALJs were not inferior officers. Having determined that Lucia had

¹ The Supreme Court explained in *Lucia* that “[t]he Appointments Clause prescribes the exclusive means of appointing ‘Officers.’ Only the President, a court of law, or a head of department can do so. *See* Art. II, § 2, cl. 2.” *Lucia v. SEC*, 138 S. Ct. 2044, 2051 (2018).

raised a timely challenge to the ALJ's appointment, the Supreme Court remanded the case for a new hearing before a properly appointed ALJ who had not previously heard the case, or before the SEC itself.² The Supreme Court's decision in *Lucia* did not specifically address the constitutional status of ALJs who work in other Federal agencies, including the Social Security Administration (SSA). To address any Appointments Clause questions involving Social Security claims, and consistent with guidance from the Department of Justice, on July 16, 2018 the Acting Commissioner of Social Security ratified the appointments of our ALJs and approved those appointments as her own.³ On the same day, the Acting Commissioner took the same actions with respect to the administrative appeals judges (AAJs) who work at the Appeals Council.⁴ We are issuing this SSR to explain how the Appeals Council will adjudicate appeals in which the claimant timely raises an Appointments Clause challenge to the authority of the ALJ who decided or dismissed a claim.

POLICY INTERPRETATION:

² *Lucia v. SEC*, 138 S. Ct. at 2055.

³ See Social Security Emergency Message (EM) 18003 REV 2, § B (available at: <https://secure.ssa.gov/apps10/reference.nsf/links/08062018021025PM>).

⁴ *Id.*

We receive millions of applications for benefits each year.⁵ The essential requirement for any system of administrative review in a program as large and complex as ours is that it “must be fair--and it must work.”⁶ In adjudicating the millions of claims we receive each year, we strive to balance the two overriding concerns of fairness and efficiency, consistent with the law. The Social Security system must be fair and accurate and provide each claimant with appropriate due process protections. At the same time, the Supreme Court has recognized that we must make decisions efficiently in order to ensure that the system continues to work and serve the American people.⁷ Because we employ more ALJs than all other Federal agencies combined, and our ALJs issue hundreds of thousands of decisions each year, *Lucia* has the potential to significantly affect our hearings and appeals process. To properly address the issues *Lucia* raises in the context of our hearings and appeals system, we have determined that some claimants are entitled to additional administrative review of their claims.

A claimant who is dissatisfied with an ALJ’s decision, or the dismissal of a request for a hearing, may request that the Appeals Council review the decision or dismissal. Under our regulations, the Appeals Council will review a case if:

⁵ In fiscal year 2017, we completed 5.62 million retirement and survivors insurance claims and 2.485 million initial disability claims. We also received 620,000 hearing requests, and completed 686,000 hearings. *FY 2019 Congressional Justification*, at 6 (available at: <https://www.ssa.gov/budget/FY19Files/2019CJ.pdf>).

⁶ *Richardson v. Perales*, 402 U.S. 389, 399 (1971).

⁷ For example, in *Barnhart v. Thomas*, 540 U.S. 20, 28-29 (2003), the Supreme Court stated that, “As we have observed, [t]he Social Security hearing system is probably the largest adjudicative system in the western world. . . . The need for efficiency is self-evident.” (quoting *Heckler v. Campbell*, 461 U.S. 458, 461 n.2 (1983)).

- (1) there appears to be an abuse of discretion by the ALJ;
- (2) there is an error of law;
- (3) the ALJ's action, findings or conclusions are not supported by substantial evidence;
- (4) there is a broad policy or procedural issue that may affect the general public interest; or
- (5) the Appeals Council receives additional evidence that the claimant shows is new, material, and relates to the period on or before the date of the ALJ hearing decision, and there is a reasonable probability that the evidence would change the outcome of the decision.⁸

We interpret some challenges to the ALJ's authority to hear and decide a claim, based on the Supreme Court's decision in *Lucia*, as raising "a broad policy or procedural issue that may affect the general public interest" within the meaning of our regulations. Challenges to an ALJ's authority to decide a claim may raise a broadly applicable procedural issue independent of the merits of the individual claim for benefits—that is, whether the ALJ who presided over the claimant's hearing was properly appointed under the Appointments Clause of the Constitution. We will process requests for review that include a timely administrative challenge to the ALJ's authority based on the Appointments Clause in the manner described below.

⁸ 20 CFR §§ 404.970(a) and (b), 416.1470(a) and (b).

The Appeals Council will grant the claimant's request for review in cases where the claimant: (1) timely requests Appeals Council review of an ALJ's decision or dismissal issued before July 16, 2018; and (2) raises before us (either at the Appeals Council level, or previously had raised at the ALJ level) a challenge under the Appointments Clause to the authority of the ALJ who issued the decision or dismissal in the case.

When the Appeals Council grants review based on a timely-raised Appointments Clause challenge, AAJs who have been appointed by the Acting Commissioner (or whose appointments the Acting Commissioner has ratified) will vacate the hearing decision or dismissal.⁹ In cases in which the ALJ made a decision, the Appeals Council will conduct a new and independent review of the claims file and either remand the case to an ALJ other than the ALJ who issued the decision under review, or issue its own new decision about the claim covering the period before the date of the ALJ's decision. In its review, the Appeals Council will not presume that the prior hearing decision was correct.¹⁰

⁹ Under our regulations, whenever the Appeals Council reviews a hearing decision under 20 CFR §§ 404.967, 404.969, 416.1467, or 416.1469, and the claimant does not appear personally or through representation before the Appeals Council to present oral argument, the Appeals Council's review will be conducted by a panel of not less than two members of the Appeals Council designated in the manner prescribed by the Chairman or Deputy Chairman of the Council. In the event of disagreement between a panel composed of only two members, the Chairman or Deputy Chairman, or his or her delegate, who must be a member of the Council, shall participate as a third member of the panel. When the claimant appears in person or through representation before the Appeals Council, the review will be conducted by a panel of not less than three members of the Council designated in the manner prescribed by the Chairman or Deputy Chairman. Concurrence of a majority of a panel shall constitute the decision of the Appeals Council unless the case is considered by the Appeals Council *en banc* or as a representative body, as provided in 20 CFR § 422.205. See 20 CFR § 422.205(b).

¹⁰ 20 CFR §§ 404.979, 416.1479.

In cases in which the ALJ dismissed a request for a hearing, the Appeals Council will vacate the ALJ's dismissal order.¹¹ It will then either: (1) decide whether the request for a hearing should be dismissed, or (2) remand the case to another ALJ to determine that issue.

When the Appeals Council grants a claimant's request for review in cases that raise a timely Appointments Clause challenge, the claimant may request a reasonable opportunity to file briefs or other written statements about the facts and law relevant to the case.¹² Our regulations also allow a claimant to request to appear before the Appeals Council to present oral argument.¹³ If the Appeals Council decides that the case raises an important question of law or policy, or that oral argument would help to reach the proper result, the Appeals Council will grant the request to appear. If the Appeals Council grants a request to appear and holds oral argument, it will notify the claimant and his or her representative about the time and place at least 10 days before the date scheduled for the appearance.¹⁴ The Appeals Council will determine whether the appearance, or the appearance of any other person relevant to the proceeding, will be in person, by video teleconferencing, or by telephone.¹⁵

When the Appeals Council grants a request for review, it will mail a notice to all parties at their last known address stating the reasons for the review and the issues to be

¹¹ 20 CFR §§ 404.960(a), 416.1460(a).

¹² 20 CFR §§ 404.975, 416.1475.

¹³ 20 CFR §§ 404.976(b), 416.1476(b).

¹⁴ *Id.*

¹⁵ *Id.*

considered.¹⁶ Consistent with our regulations, the Appeals Council will consider all the evidence in the ALJ hearing record, as well as additional evidence subject to the limitations on Appeals Council consideration of additional evidence in 20 CFR §§ 404.970 and 416.1470. The Appeals Council will also consider any arguments the claimant or representative made in writing or at the hearing and will also consider any additional arguments submitted to it.

The Appeals Council will either remand the case to a different ALJ; issue a new, independent decision; or, as appropriate, issue an order dismissing the request for a hearing. When the Appeals Council issues a decision, its decision may result in different findings from the ALJ hearing decision that the Appeals Council vacated.¹⁷ When the Appeals Council grants review and issues its own decision, its decision will be based on the preponderance of the evidence.¹⁸

¹⁶ 20 CFR §§ 404.973, 416.1473

¹⁷ 20 CFR §§ 404.979, 416.1479.

¹⁸ *Id.*

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