



4191-02U

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2019-0033]

**Social Security Acquiescence Ruling 19-1(6), *Hicks v. Commissioner of Social Security*: Disregarding Evidence During Redeterminations under Sections 205(u) and 1631(e)(7) of the Social Security Act**

AGENCY: Social Security Administration.

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

SUMMARY: This Social Security AR explains how we will apply a holding in a decision of the United States Court of Appeals for the Sixth Circuit. We have determined that the court's holding conflicts with our interpretation of the provisions of the Social Security Act (Act) that require us to disregard evidence when we conduct a redetermination or make an initial determination of entitlement or eligibility, in cases in which there is a reason to believe that fraud or similar fault was involved in the providing of evidence.

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

FOR FURTHER INFORMATION CONTACT: Amanda Gilman, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-9641, 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 the holding in *Hicks v. Commissioner of Social Security*, 909 F.3d 786 (6th Cir. 2018), rehearing en banc denied (March 29, 2019). *Hicks* addressed the procedures we apply when we make a decision at the hearings level of our administrative review process and disregard evidence under sections 205(u) and 1631(e)(7) of the Act.

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 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 *Hicks v. Commissioner of Social Security* when we disregard evidence under sections 205(u) and 1631(e)(7) of the Act at the hearings level of our administrative review process. We will apply this AR to all decisions we make under sections 205(u) and 1631(e)(7) of the Act on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** for individuals who reside in one of the States within the Sixth Circuit. If we made a decision at the hearings level of our administrative review process and disregarded evidence under sections 205(u) or 1631(e)(7) of the Act between November 21, 2018, the date of the court of appeals' decision, and **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the date we will begin to apply this AR, the affected

individual may request that we apply the AR to the prior decision. The affected individual must show, pursuant to 20 CFR §§ 404.985(b)(2) or 416.1485(b)(2), that applying the AR could change our prior decision in the case.

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 us within the circuit 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. However, a claimant does not need to receive a notice in order to request that we apply this AR to our prior determination or decision on his or her claim, 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; 96.006 Supplemental Security Income)

Dated: December 23, 2019.

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Andrew Saul,  
Commissioner of Social Security.

ACQUIESCENCE RULING 19–1(6)

*Hicks v. Commissioner of Social Security*, 909 F.3d 786 (6th Cir. 2018), reh’g en banc den. (Mar. 29, 2019): Disregarding Evidence During Redeterminations under Sections 205(u) and 1631(e)(7) of the Social Security Act.

ISSUE: Sections 205(u) and 1631(e)(7) of the Act require us to redetermine entitlement to or eligibility for benefits if there is reason to believe fraud or similar fault was involved in an application for benefits. When we redetermine entitlement or eligibility, or we make an initial determination of entitlement or eligibility, these sections of the Act also require that we disregard any evidence if there is reason to believe that fraud or similar fault was involved in providing that evidence. Do we have to consider an individual’s objection to disregarding the evidence before we disregard the evidence?

STATUTE/REGULATION/RULING CITATION: Sections 205(u) and 1631(e)(7) of the Social Security Act (42 U.S.C. §§ 405(u) and 1383(e)(7)); Social Security Ruling (“SSR”) 16-1p, 81 Fed. Reg. 13436 (Mar. 14, 2016); SSR 16-2p, 81 Fed. Reg. 13440 (March 14, 2016).

CIRCUIT: Sixth (Kentucky, Michigan, Ohio, Tennessee).

APPLICABILITY OF RULING: This ruling applies to decisions we make when we disregard evidence under sections 205(u) and 1631(e)(7) of the Social Security Act (Act) at the hearings level of our administrative review process for individuals who reside in a State within the Sixth Circuit.

DESCRIPTION OF CASE:

Plaintiff Amy Jo Hicks and several other plaintiffs whose cases were consolidated for purposes of appeal applied for and were awarded Social Security Disability Insurance Benefits (DIB) or Supplemental Security Income (SSI) payments based on disability, after being represented by an attorney who provided evidence on their behalf. After the plaintiffs and nearly 2000 other claimants had been found disabled and entitled to or eligible for benefits, the Office of the Inspector General (OIG) informed us, in accordance with section 1129(l) of the Act, that it had reason to believe fraud was involved in the applications and in the providing of evidence. The United States District Court for the Eastern District of Kentucky subsequently convicted the plaintiffs' attorney, the administrative law judge who decided the plaintiffs' claims, and a doctor who provided evidence in support of the applications of perpetrating a large-scale fraud scheme on the agency. Based on these criminal convictions, the district court sentenced each defendant to terms in Federal prison for their respective roles in this massive fraud scheme.

As required by sections 205(u) and 1631(e)(7) of the Act, we redetermined the entitlement to and eligibility for benefits of the individuals whom the OIG referred to us. During the redeterminations, we held new hearings and in each case disregarded evidence OIG told us that it had reason to believe involved fraud. In making the redetermination, we considered the rest of the evidence in the plaintiffs' claims files, any new evidence related to the relevant period that plaintiffs submitted, and we heard argument regarding each plaintiff's entitlement to DIB or eligibility for SSI payments based on disability.

Plaintiffs argued that during the redeterminations, they should have been given the opportunity to show that fraud was not involved in providing evidence in their claims.

**HOLDING:**

In *Hicks v. Commissioner of Social Security*, 909 F.3d 786 (6th Cir. 2018), *reh'g denied* (Mar. 29, 2019), the Court of Appeals for the Sixth Circuit held, in a 2-1 decision, that before disregarding evidence during a redetermination, we must provide a factual basis for the reason to believe fraud was involved in providing evidence, and plaintiffs must have a chance to rebut our assertions before a neutral decisionmaker.

**STATEMENT AS TO HOW *HICKS* DIFFERS FROM THE AGENCY'S POLICY:**

Under our interpretation of sections 205(u) and 1631(e)(7) of the Act, when we disregard evidence in cases OIG refers to us because there is a reason to believe fraud was involved in the application and in the providing of evidence, we do not consider the individual's objection to disregarding the evidence.

The court of appeals' decision differs from our policy because it held that when we disregard evidence under sections 205(u) and 1631(e)(7) of the Act, we must provide the affected individual the opportunity to challenge the reason to believe that fraud or similar fault was involved in the provision of evidence in his or her case.

**EXPLANATION OF HOW WE WILL APPLY *HICKS* WITHIN THE CIRCUIT:**

This Ruling applies only to cases in which we disregard evidence based on a referral from OIG under section 1129(l) of the Act and the affected individual resides in Kentucky, Michigan, Ohio, or Tennessee at the time we make the decision at the hearings level of our administrative review process.

In these States, before we disregard the evidence pursuant to sections 205(u)(1)(B) and 1631(e)(7)(A)(ii) of the Act at the hearings level of our administrative review process, we will consider the individual's objection to the disregarding of that evidence.

Our adjudicators will decide whether there is a reason to believe that fraud or similar fault was involved in providing evidence in the individual's case. We define a "reason to believe" as reasonable grounds to suspect that fraud or similar fault was involved in the application or in the provision of evidence. The "reason to believe" standard requires more than a mere suspicion, speculation or a hunch, but it does not require a preponderance of evidence. Adjudicators may make reasonable inferences based on the totality of circumstances, such as facts or case characteristics common to patterns of known or suspected fraudulent activity. For us to disregard evidence, it is not necessary that the affected beneficiary or recipient had knowledge of or participated in the fraud or similar fault.

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