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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 1@ Unemployment and Disability Compensation

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Part 2@ Disability Compensation

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Chapter 2@ Disability Benefits

2675-1 In-Office Eligibility Review for Continued Benefits

Article 3@ DETERMINATIONS OF CONTINUING ELIGIBILITY

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Section 2675-1@ In-Office Eligibility Review for Continued Benefits

(a) Scope. This section establishes an in-office eligibility review process for the purpose of giving claimants suspected of fraud, who are currently receiving disability benefits, a fair and equitable opportunity to be heard in person before a decision is made regarding their continued eligibility to receive disability benefits.

(b)

Fraud. When the department has information which leads the director to suspect that a claim is fraudulent, the director may terminate the fraudulent benefit payments to protect the solvency of the Disability Fund, provided the claimant affected is promptly given notice and an opportunity to be heard in person and refute evidence in the department's possession before such termination takes place. (1) "Fraud" or "suspected of fraud," for purposes of this section may include, but is not limited to, any one of the following circumstances where the department has information that: (A) The claim was filed by a person other than the individual named on the claim form or an authorized representative of the named individual, leading the director to believe that the claimant is misrepresenting his or her true identity. (B) The validity of the claimant's diagnosis in the medical certificate, as defined in Section 2708, Unemployment Insurance Code (Code), cannot be substantiated by additional medical records and/or evidence from the certifying physician, practitioner, or other persons authorized

by Code Sections 2708(d) and 2708(e), leading the director to believe that the claimant is misrepresenting his or her medical condition. (C) The claimant, either personally or through the assistance of another person, has willfully made a false statement or representation, with actual knowledge of the falsity thereof, or withheld a material fact to obtain benefits. (D) An organized scheme to defraud the department exists. (2) "Eligibility Reviewer" means any person designated by the director to conduct an eligibility review, but shall not include a person reporting to the manager of the field office where the claim is filed. The eligibility reviewer shall not be the presenter of the department's position with regard to the claimant's eligibility for benefits.

(1)

"Fraud" or "suspected of fraud," for purposes of this section may include, but is not limited to, any one of the following circumstances where the department has information that: (A) The claim was filed by a person other than the individual named on the claim form or an authorized representative of the named individual, leading the director to believe that the claimant is misrepresenting his or her true identity. (B) The validity of the claimant's diagnosis in the medical certificate, as defined in Section 2708, Unemployment Insurance Code (Code), cannot be substantiated by additional medical records and/or evidence from the certifying physician, practitioner, or other persons authorized by Code Sections 2708(d) and 2708(e), leading the director to believe that the claimant is misrepresenting his or her medical condition. (C) The claimant, either personally or through the assistance of another person, has willfully made a false statement or representation, with actual knowledge of the falsity thereof, or withheld a material fact to obtain benefits. (D) An organized scheme to defraud the department exists.

(A)

The claim was filed by a person other than the individual named on the claim form or an authorized representative of the named individual, leading the director to believe that the claimant is misrepresenting his or her true identity.

(B)

The validity of the claimant's diagnosis in the medical certificate, as defined in Section 2708, Unemployment Insurance Code (Code), cannot be substantiated by additional medical records and/or evidence from the certifying physician, practitioner, or other persons authorized by Code Sections 2708(d) and 2708(e), leading the director to believe that the claimant is mispresenting his or her medical condition.

(C)

The claimant, either personally or through the assistance of another person, has willfully made a false statement or representation, with actual knowledge of the falsity thereof, or withheld a material fact to obtain benefits.

(D)

An organized scheme to defraud the department exists.

(2)

"Eligibility Reviewer" means any person designated by the director to conduct an eligibility review, but shall not include a person reporting to the manager of the field office where the claim is filed. The eligibility reviewer shall not be the presenter of the department's position with regard to the claimant's eligibility for benefits.

(c)

Notice of Eligibility Review. Written notice of the review shall be mailed to the claimant and, if applicable, to the authorized representative, at least ten (10) days before the date of the review. The notice shall include: (1) The date, time, and place of the review. (2) The issue(s) to be determined. (3) A summary of the evidence indicating why benefits should be terminated. (4) The claimant's rights

as described in subdivisions (e), (f), and (g) of these regulations. The ten (10) day notice requirement may be shortened with the consent of all parties.

(1)

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(2)

The issue(s) to be determined.

(3)

A summary of the evidence indicating why benefits should be terminated.

(4)

The claimant's rights as described in subdivisions (e), (f), and (g) of these regulations.

The ten (10) day notice requirement may be shortened with the consent of all parties.

(d)

Location of Eligibility Reviews. The department shall set the time, date, and place of the review at a location in California, within reasonable commuting distance to the claimant. Factors considered in determining a reasonable commuting distance to the review shall also include, but not be limited to: (1) The claimant's residence address as known to the department. (2) The location of the physician who certified the claimant for disability benefits. (3) The location of the field office of the department where the claimant has filed for benefits. (4) The location of the the claimant's last California employment prior to becoming disabled.

(1)

The claimant's residence address as known to the department.

(2)

The location of the physician who certified the claimant for disability benefits.

(3)

The location of the field office of the department where the claimant has filed for

benefits.

(4)

The location of the the claimant's last California employment prior to becoming disabled.

(e)

Conduct of Review and Evidence. (1) The eligibility reviewer shall control the taking of evidence in a review in a manner best suited to ascertain the facts and safeguard the rights of the parties involved. Prior to the taking of evidence, the eligibility reviewer shall explain the issues and the order in which the review shall proceed. (2) Testimony shall be taken under oath, affirmation, or penalty of perjury. (3) Each party shall have the right to present evidence, to introduce the testimony of witnesses, and to confront or cross-examine adverse witnesses. (4) The claimant shall be granted an opportunity to examine the department's eligibility review file. (5) The proceedings shall be tape recorded.

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(4)

The claimant shall be granted an opportunity to examine the department's eligibility

review file.

(5)

The proceedings shall be tape recorded.

(f)

Right to Counsel. Any party shall have the right to be represented by counsel. However, the department shall not be required to provide counsel to any party.

(g)

Claimant's Written Submission in Lieu of Personal Appearance.(1) A request by a claimant to present his or her case through a written submission shall be received at least three (3) days prior to the scheduled review. The request shall be made in writing. (2) A request for written submission shall be granted upon a showing of good cause for the claimant's inability to appear in person at the review.

Unwillingness to appear in person, when able to do so, shall not be grounds for the granting of a written submission. (3) Upon granting a request for written submission, the department shall promptly notify the claimant prior to the scheduled review as to the time and manner in which the written submission is to be submitted. The department shall give the claimant a reasonable amount of time based upon a consideration of his or her circumstances to prepare and submit a written submission. (4) The written submission shall include a written statement or arguments signed by the claimant under penalty of perjury or other documents supporting the claimant's position. (5) Disability benefits shall be continued pending review of the written submission if the claimant's request for written submission is granted.

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A request for written submission shall be granted upon a showing of good cause for the claimant's inability to appear in person at the review. Unwillingness to appear in person, when able to do so, shall not be grounds for the granting of a written submission.

(3)

Upon granting a request for written submission, the department shall promptly notify the claimant prior to the scheduled review as to the time and manner in which the written submission is to be submitted. The department shall give the claimant a reasonable amount of time based upon a consideration of his or her circumstances to prepare and submit a written submission.

(4)

The written submission shall include a written statement or arguments signed by the claimant under penalty of perjury or other documents supporting the claimant's position.

(5)

Disability benefits shall be continued pending review of the written submission if the claimant's request for written submission is granted.

(h)

Preparation For Review. Having been given timely and adequate notice, all parties are responsible for being prepared with evidence, testimony, and witnesses at the time and place of the review.

(i)

Failure to Appear. (1) If a party scheduled for review fails to appear at the review, the eligibility reviewer shall make a determination based upon the facts

available at the time of the scheduled review. (2) Notice of the eligibility reviewer's determination based upon a review of the record shall be issued, in writing, within ten (10) days of the date of the scheduled review. If the eligibility reviewer determines that the claimant is not eligible, the notice shall notify the claimant that he or she may either: (A) Appeal to an administrative law judge within twenty (20) days from the mailing or personal service of the determination; or (B) Apply for a reconsideration of the determination, in writing, within twenty (20) days from the mailing or personal service of the determination and show good cause for failure to appear at the hearing. (3) If the party who failed to appear applies for a reconsideration, in writing, within twenty (20) days after mailing or personal service of the determination, but does not show good cause for failure to appear at the review, a written notice of the denial of the request for reconsideration with a written notice of the eligibility reviewer's determination, including the appeal rights pursuant to subdivision (j)(5), shall be mailed to the claimant. (4) If the party who failed to appear applies for a reconsideration, in writing, within twenty (20) days after mailing or personal service of the determination and shows good cause for failure to appear at the review, an eligibility review will be scheduled pursuant to subdivisions (c) through (g) of these regulations. (5) Disability benefits shall be continued preceding the eligibility review if the claimant's request for reconsideration of the determination of the eligibility reviewer is granted.

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If a party scheduled for review fails to appear at the review, the eligibility reviewer shall make a determination based upon the facts available at the time of the scheduled review.

(2)

Notice of the eligibility reviewer's determination based upon a review of the record

shall be issued, in writing, within ten (10) days of the date of the scheduled review. If the eligibility reviewer determines that the claimant is not eligible, the notice shall notify the claimant that he or she may either: (A) Appeal to an administrative law judge within twenty (20) days from the mailing or personal service of the determination; or (B) Apply for a reconsideration of the determination, in writing, within twenty (20) days from the mailing or personal service of the determination and show good cause for failure to appear at the hearing.

(A)

Appeal to an administrative law judge within twenty (20) days from the mailing or personal service of the determination; or

(B)

Apply for a reconsideration of the determination, in writing, within twenty (20) days from the mailing or personal service of the determination and show good cause for failure to appear at the hearing.

(3)

If the party who failed to appear applies for a reconsideration, in writing, within twenty (20) days after mailing or personal service of the determination, but does not show good cause for failure to appear at the review, a written notice of the denial of the request for reconsideration with a written notice of the eligibility reviewer's determination, including the appeal rights pursuant to subdivision (j)(5), shall be mailed to the claimant.

(4)

If the party who failed to appear applies for a reconsideration, in writing, within twenty (20) days after mailing or personal service of the determination and shows good cause for failure to appear at the review, an eligibility review will be scheduled pursuant to subdivisions (c) through (g) of these regulations.

(5)

Disability benefits shall be continued preceding the eligibility review if the claimant's request for reconsideration of the determination of the eligibility reviewer is granted.

(j)

Notice of Determination. (1) Notice of the eligibility reviewer's determination, made after the holding of an eligibility review, shall be issued, in writing, within ten (10) working days of the date of the scheduled review. (2) The notice shall set forth the decision, the reasons for the decision, evidence relied upon, and the date of mailing or service. (3) A copy of the determination shall be mailed to each party and, if applicable, to the authorized representative. (4) The claimant may appeal to an administrative law judge within twenty (20) days from the mailing or personal service of the notice of determination. The department may extend the twenty (20) day period for good cause. Notwithstanding Section 2706-5 of these regulations, disability benefits shall not be continued pending the decision of an administrative law judge.

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Notice of the eligibility reviewer's determination, made after the holding of an eligibility review, shall be issued, in writing, within ten (10) working days of the date of the scheduled review.

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The notice shall set forth the decision, the reasons for the decision, evidence relied upon, and the date of mailing or service.

(3)

A copy of the determination shall be mailed to each party and, if applicable, to the authorized representative.

(4)

The claimant may appeal to an administrative law judge within twenty (20) days from the mailing or personal service of the notice of determination. The department may extend the twenty (20) day period for good cause. Notwithstanding Section 2706-5 of these regulations, disability benefits shall not be continued pending the decision of an administrative law judge.