

"A new application is not the same as an appeal of this determination."

However, the fact that a notice contained this additional statement is a factor to be considered along with all of the pertinent facts in each case in determining whether good cause for failure to file a timely request for administrative review exists. The presence of this additional statement will make it more difficult for a claimant to show that he or she did not make a timely request for administrative review as a result of the notice. In making the good cause determination when the notice contained this additional statement, the adjudicator may consider whether the claimant should reasonably have been expected to make additional inquiries, whether such inquiries were made, and the results thereof.

B. Proof of Receipt of a Notice Covered by This Ruling

Absent evidence to the contrary, SSA will presume that any notice of an initial or reconsideration determination denying a claim for title II disability benefits is covered by this Ruling if it was dated after August 31, 1977, and prior to March 1, 1990.

In all other situations (e.g., notices in title II nondisability claims, title XVI disability notices and any notice dated prior to September 1, 1977, or after February 28, 1990), the claimant must furnish a copy of the notice covered by this Ruling, or SSA's records must show that a notice covered by this Ruling was issued to the claimant.

C. Failure To Request Administrative Review as a Result of a Notice Covered by this Ruling

Under this Ruling, the Agency will find that a claimant has demonstrated that the failure to file a timely request for administrative review was the result of a notice covered by this Ruling if he or she provides an acceptable explanation, based on all the pertinent facts in a particular case, linking his or her failure to file a timely request for administrative review to the absence in the notice of a statement that filing a new application instead of a request for administrative review could result in the loss of benefits.

In making this determination, factors which an adjudicator may consider include, but are not limited to, the following:

—The claimant's explanation of what he or she thought the notice meant and how that understanding influenced his or her actions;

- The claimant's mental condition;¹
- The claimant's educational level;
- The claimant's ability to speak and understand the English language;
- How much time elapsed before the claimant filed a subsequent claim or sought administrative review of the prior determination; and
- Whether the claimant was represented by a non-attorney. Normally, representation by an attorney at the time of receipt of the notice bars a claimant from relief under this Ruling.

D. Good Cause Found

If the adjudicator determines that good cause exists, he or she will extend the time for requesting administrative review and take the action which would have been appropriate had the claimant filed a timely request for administrative review. A finding of good cause will result either in a new determination or decision that is subject to further administrative or judicial review of the claim, or a dismissal (for a reason other than late filing) of the request for review, as appropriate.

E. Good Cause Not Found

If the adjudicator determines that good cause does not exist, he or she will deny the request to extend the time for filing and dismiss the request. The dismissal will state the adjudicator's rationale for not finding good cause and advise the claimant that he or she can file a new application.

FOR FURTHER INFORMATION CONTACT: This Ruling does not supersede or modify any instructions issued in connection with Acquiescence Ruling (AR) 92-7(9). Claimants in the Ninth Circuit are eligible for relief under the conditions set forth in this Ruling and/or under the AR as applicable. SSA will not apply this Ruling where the administrative determination at issue has been reopened previously or where a decision finding good cause to extend the time for review of that determination has been made previously under SSA policies and procedures or under court order.

EFFECTIVE DATE: This Ruling is effective April 26, 1995.

CROSS-REFERENCES: Program Operations Manual System, Part 2, Chapter 031, Subchapters 01 and 09; Part 4, Chapter 275, Subchapter 16; Acquiescence

¹ In cases in which the claimant's capacity to understand the administrative appeal process is questionable, Social Security Ruling 91-5p and for Fourth Circuit residents, Acquiescence Ruling 90-4(4) should be applied prior to consideration under this Ruling.

Ruling 92-7(9); Social Security Ruling 91-5p.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD13-95-015]

Notice of National Environmental Policy Act Activity

AGENCY: Coast Guard, DOT.

ACTION: Notice; Intent to prepare environmental assessment of Seattle Seafair Unlimited Hydroplane Races and Airshow, Lake Washington, Seattle, WA.

SUMMARY: The Coast Guard is preparing an Environmental Assessment (EA) to consider the environmental effects of granting a marine event permit to Seafair, Inc. for the Seattle Seafair Unlimited Hydroplane Races and Airshow. The Coast Guard is seeking public comment in order to assist in determining the relevant issues, possible environmental effects, and proper scope of this EA. This notice provides information about the event and explains how members of the public can submit their comments to the Coast Guard.

DATES: Persons wishing to submit written comments regarding the scope of the EA, including alternatives and environmental effects to be addressed, should do so on or before May 26, 1995.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Group Seattle, 1519 Alaskan Way So., Seattle, WA 98134. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in Building One, Room 130, Operations Division. Normal office hours are between 7 a.m. and 4 p.m. Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG Ben White, U.S. Coast Guard Group Seattle, (206) 217-6138.

SUPPLEMENTARY INFORMATION:

Proposed Action

The Seattle Seafair Unlimited Hydroplane Race and Airshow is scheduled to be held on August 4, 5, and 6, 1995. Pursuant to the requirements of 33 CFR part 100, the sponsor of the event, Seafair, Inc., has applied for a Marine Event Permit from the U.S. Coast Guard. In accordance