

# JUSTICE IN AGING

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FIGHTING SENIOR POVERTY THROUGH LAW

*Hart v. Berryhill* Implementation  
(also known as *Hart v. Colvin*)

Focus on class members with closed claims

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Thursday, September 7, 2017

# JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems with getting on to the webinar? Send an e-mail to [trainings@justiceinaging.org](mailto:trainings@justiceinaging.org).
- Slides and a recording are available at Justice in Aging - Advocates Resources - Trainings: [justiceinaging.org/resources-for-advocates/webinars](https://justiceinaging.org/resources-for-advocates/webinars). See also the chat box for this web address.

# JUSTICE IN AGING

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FIGHTING SENIOR POVERTY THROUGH LAW

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

# Today's Agenda

1. Overview of *Hart v. Berryhill (Colvin)* class action
2. Overview of the class, and categories eligible for relief
3. The Details
  1. Notice A (Group 1)
  2. Notice A2 (Group 1)
  3. Notice B (Group 2)
  4. Notice B2 (Group 2)

# Overview of *Hart v. Berryhill*

Also known as *Hart v. Colvin*

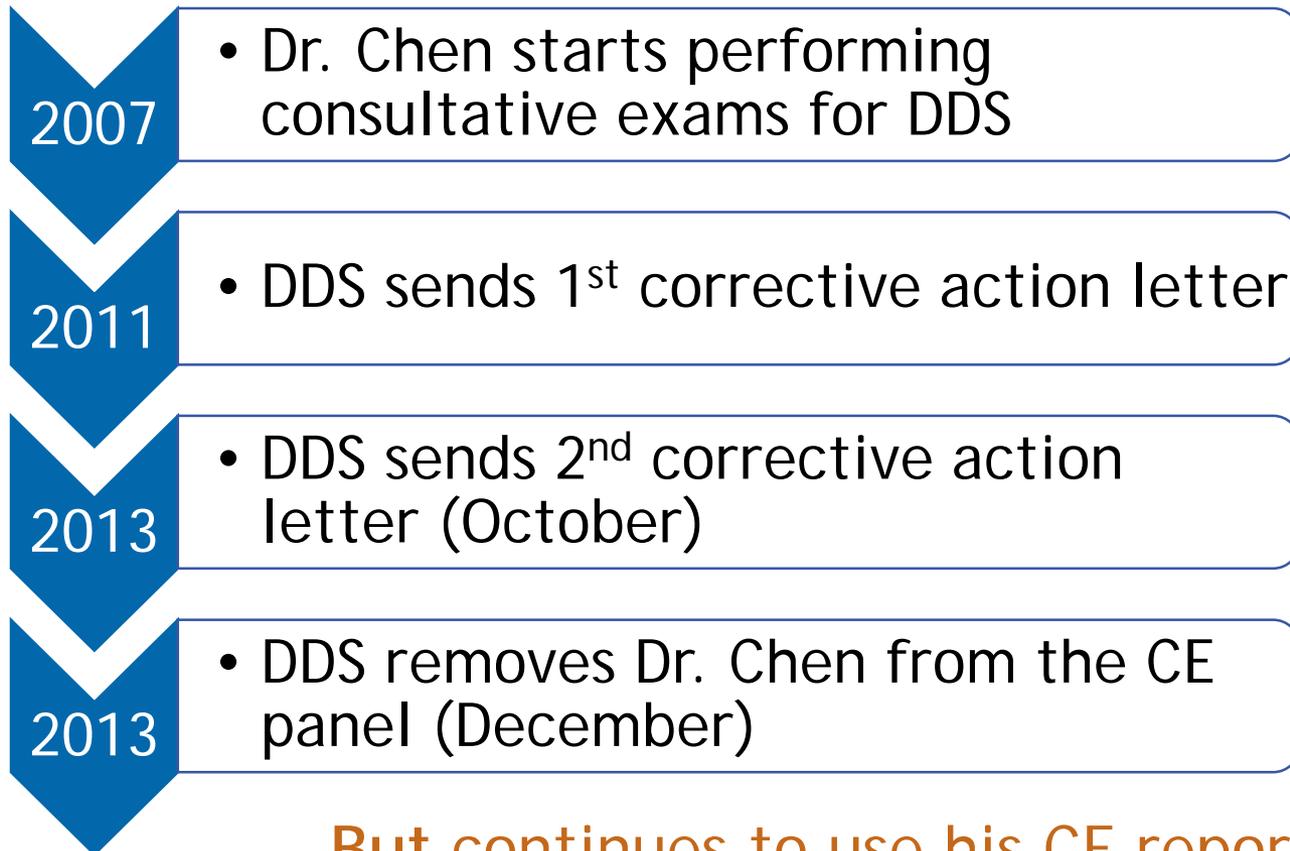
# Background of case

- Social Security consultative examiner Dr. Frank Chen
- Performed consultative exams (CEs) in the Greater Bay Area, and as far south as San Luis Obispo
- Many complaints over a period of years

# The Complaints

- Statements that he performed tests he did not in fact perform
- Conclusions that were inconsistent with medical evidence already in the record, with no explanation of the inconsistency
- Exams were very short
- Claimants reported instances of rudeness, bias and other inappropriate remarks

# Sequence of Events



But continues to use his CE reports to deny and terminate SSI and SSDI benefits

# The Case

*Hart v. Berryhill*, No. 3:15-cv-623-JST (N.D. Cal)

Also known as *Hart v. Colvin*

Case brought by Justice in Aging, the law firm of Morrison & Foerster LLP, and the Legal Aid Society of San Mateo County.



Settlement implementation:  
July 2017 - March 2018

# Overview of the Class, and Categories Eligible for Relief

# The Class

Examined by Dr. Chen from 2007 through 2013

- SSDI or SSI disability application
- Continuing Disability Review

AND claim denied in part (partially favorable decision) or in full (unfavorable decision)

# The Class: Two Exceptions

1. In current pay status on October 14, 2015 =  
Receiving SSDI, or SSDI that converted into Social Security retirement at full retirement age; or receiving SSI on the basis of disability, or SSI disability that converted into SSI on the basis of age at age 65
  - Not “current pay” if receiving Social Security retirement that was not converted from disability benefits, or if came into current pay status after 10/14/15.
  - Also not “current pay” if receiving SSI based on age that was not converted from SSI disability, or if came into current pay status after 10/14/15.
2. ALJ’s decision explicitly stated that Dr. Chen’s report was not given any weight.

# Categories Eligible for Relief

## Notice C

(Group 3) Claim is open at SSA on April 25, 2017.

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- Saw Dr. Chen from 2007-2013. Notices were mailed July 10, 2017, with deadline to return request form 30 days from receipt. Some notices mailed later.

## Notice A and A2

(Group 1) Claim is closed as of April 25, 2017. More recent claims.

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- Saw Dr. Chen from 2011-2013. Notices will be mailed on September 25, 2017 or a few days before.

## Notice B and B2

(Group 2) Claim is closed as of April 25, 2017. Less recent claims.

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- Saw Dr. Chen from 2007-2010. Notices will be mailed on September 25, 2017 or a few days before.

**JUSTICE IN AGING**

FIGHTING SENIOR POVERTY THROUGH LAW

# What is a Closed Claim?

- Claim is closed as of April 25, 2017  
→ no active administrative appeal in process on the claim with the Chen CE.
- A claim pending in federal court, or that resulted in a final judgment by a federal court, is a closed claim.

# Note on Notice C (Group 3)

- Basic relief for Notice C is ability to choose whether the Dr. Chen report is considered in adjudicating their claim.
- On July 10, 2017, SSA mailed Notice C to most class members with pending claims, and to their authorized representatives. A small number of notices were not mailed until late August. Request forms due 30 days from receipt of the notice.
- For more information, see webinar on Notice C.  
<http://www.justiceinaging.org/webinar-implementation-hart-v-berryhill-colvin/>

# Details for Notice A and A2 (Group 1)

More recent closed claims (exam in 2011-2013)

# A and A2 Relief

- Class members receiving Notice A or A2 are eligible for readjudication of prior claim with full appeal rights.
- If determined disabled for any period continuing from the end of the previously adjudicated period, can receive ongoing benefits if can establish disability going forward (assuming non-medical eligibility requirements are met).

# The Relief: Notice A and A2

Must opt in to relief by sending request form to Social Security.

Can get back benefits for closed claim period, if can prove disability for closed claim

If got back benefits through end of previously adjudicated period, then can also get benefits continuing from end of prior claim up to the present and ongoing, if can prove disability in that time period

# Notice A Detailed Process

# Who Will Receive Notice A?

- Individual examined by Dr. Chen between January 1, 2011 and December 31, 2013
- Claim was closed as of April 25, 2017
- Unfavorable decision
- A copy of the notice will not be mailed to the authorized representative on the closed claim.

# What Does Notice A Say?

- Informs class member about the settlement
- **Request form:** Does the class member want their closed claim readjudicated?
- **Deadline to return request form:** 90 days from date of receipt.
  - Mailing deadline. USPS Certificate of Mailing at \$1.35, Signature Confirmation at \$2.90/\$2.45, Certified Mail at \$3.35.
  - Remember good cause for returning the request form late. 20 CFR §§ 404.911, 416.1411
- 60 days after mailing of notice, if class member has not submitted the request form, then SSA will mail a second notice, which includes a copy of the original notice and request form.  
60-day notice does not toll 90-day deadline to return request form.



A

**Social Security Administration  
Important Information**

SOCIAL SECURITY  
[6401 SECURITY BLVD  
BALTIMORE, MD 21235]  
Date:  
BNC:

John Doe  
123 Main St  
Anytown, MD 12345

**NOTICE OF CLASS ACTION SETTLEMENT AND REQUEST FORM**

**You May Be Eligible For Review Of Your Prior Disability Claim –  
Please Return The Enclosed Form Within 90 Days After You Get This Notice**

You are receiving this notice and request form because of a class action settlement in a lawsuit. The lawsuit alleged the Social Security Administration should not have relied on consultative examination reports from Dr. Frank Chen. Plaintiffs alleged that Dr. Chen's reports were flawed

John Doe  
123 Main Street  
Anytown, MD 12345

*Hart v. Colvin* REQUEST FORM

**IMPORTANT**

**Return This Form Using the Enclosed Envelope Within 90 Days of Receiving It  
If You Want Us To Review Your Prior Claim**

*Part I: Request That Social Security Review My Prior Claim*

*By signing below, you are requesting that Social Security review your prior claim.*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Telephone Number

*Part II: Updated Address*

*If your current address is different from the one printed at the top of this request form, please  
print your current address information below. Otherwise, you should leave Part II blank:*

*Street Address:*

\_\_\_\_\_

*City, State, and Zip Code*

\_\_\_\_\_

# A: Claim Ended at Initial or Reconsideration (DPU process)

Mailing deadline.  
Good cause applies.

Class member returns request form within 90 days of receiving the notice.



DPU sends request for supplemental information to class member. Form to be returned within 60 days of receipt.

Prior to end of the 60 days, can request a reasonable extension of time to submit evidence.



Class member provides supplemental information (if available) to DPU, about the closed period. DPU will not order a new CE.

SSA will set up Disability Processing Unit (DPU) to process *Hart* readjudications.



DPU makes new determination on closed claim, without considering Chen CE.



Class member can appeal.

Note: Appeal goes straight to ALJ, without necessity of Reconsideration for claims that ended at Initial.



If approved for closed claim, can get back benefits.

Only if approved thru end of closed period, DPU will then decide if disability continued from end of closed period to present.



DPU requests evidence from class member on disability from the end of the closed claim to the present. DPU can order a new CE.



If approved for any time period continuing from closed claim, can get benefits for that period. Could be continuing up to the present and ongoing.



DPU makes determination of whether disability continued from end of closed claim to the present.



Class member can appeal.

Note: Appeal goes straight to ALJ, without necessity of Reconsideration for claims that ended at Initial.

# A: Claim Ended at ALJ or Appeals Council (ALJ process)

Mailing deadline.  
Good cause applies.

Prior to end of the 60 days, can  
request a reasonable extension  
of time to submit evidence.

Class member returns request  
form within 90 days of receiving  
the notice.



All claims will be processed at  
ALJ level.

ALJ sends request for  
supplemental information to  
class member. Form to be  
returned within 60 days of  
receipt.



Could get benefits for closed claim, plus for any  
time period continuing from closed claim. Benefits  
could continue up to the present and ongoing.

ALJ has discretion to take  
evidence for closed period &  
current period in single hearing.  
ALJ can order new CE. If  
approved thru end of closed  
period, ALJ also determines if  
disability continues to present.



Class member provides  
supplemental information (if  
available) to ALJ, about the  
closed period and up until the  
present.



Class member can appeal to  
Appeals Council. Then to  
federal court.

# A: Claim Is or Was in District Court (ALJ process)

Mailing deadline.  
Good cause applies.

Prior to end of the 60 days, can  
request a reasonable extension  
of time to submit evidence.

Class member returns request  
form within 90 days of receiving  
the notice.

All claims will be processed at  
ALJ level.

ALJ sends request for  
supplemental information to  
class member. Form to be  
returned within 60 days of  
receipt.

## Preliminary step for claims in district court

Claim pending: File motion for remand to SSA for further proceedings within 90 days of receiving Notice A.

Claim resulted in final judgment: File 60(b)(6) motion for relief from judgment within 90 days of receiving Notice A.

For both scenarios, the basis for the motion is that SSA has entered into the *Hart* settlement agreement under which claimant is potentially eligible for relief, and claimant wishes to be eligible for consideration for such relief. If SSA then determines that Dr. Chen's report was afforded weight (i.e., more than no weight) in the ALJ's analysis, SSA will file a notice of non-opposition in response to such a motion.

Class member can appeal to  
Appeals Council. Then to  
federal court.

# Motion for Remand and 60(b)(6) Motion

- Discretionary motion, though no reason to believe that it would not be granted.
- May want to include
  - Copy of notice received,
  - Copy of order granting final approval and subsequent stipulation and order (both on Justice in Aging's website), and
  - Declaration stating that agency has agreed pursuant to Section III.A.2(d) of settlement agreement not to oppose the motion.

# Consider Contacting the Authorized Representative on the Closed Claim

- A copy of Notice A will not be mailed to the authorized representative on the closed claim, if there was one.
- For the authorized representative to receive a copy of the notice, class member must send the notice to them.

# Updating Medical Records for the Readjudication

Start process of updating medical records right away, including records from specialists if impairment is in the field of a specialist. If possible, even before sending in request form.

- Can submit request form close to the 90-day deadline, if more time needed to gather records.
- After request form submitted, SSA sends claimant form requesting supplemental evidence on the closed claim.
  - Form due 60 days from date of receipt. Prior to end of the 60 days, can request a reasonable extension of time to submit supplemental evidence.

# To Receive Benefits, Must Also Meet Non-Medical Criteria

In order to get back benefits for closed claim, or to get benefits continuing from end of closed claim, in addition to proving disability:

- SSI: Must meet non-medical criteria (income, assets, etc.)

# For CDRs: Is Medical Improvement Standard Met?

- Initial burden is on SSA to show medical improvement related to the ability to work, from the comparison point decision (CPD, most recent favorable medical decision)
  - “medical improvement” = a decrease in the medical severity of impairment(s) which was present at CPD. Must be based on improvement in symptoms/signs/laboratory findings.
- Without the Dr. Chen CE, has SSA met its burden?
- 20 CFR §§ 404.1594, 416.994

# Possible Limited Risk

- If subsequent favorable claim and SSA is within the time for reopening that claim, possible risk:
  - In current pay now based on subsequent claim. Remember: no “current pay” risk if receiving early retirement or SSI on the basis of age.
  - Had separate closed period of disability.

# Notice A2 Detailed Process

# Who Will Receive Notice A2?

- Individual examined by Dr. Chen between January 1, 2011 and December 31, 2013
- Claim was closed as of April 25, 2017
- Partially favorable decision
- Class member can ask SSA to mail a copy of the notice to the authorized representative on the closed claim.

# Notice A2 are Partially Favorable Decisions

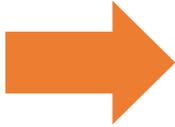
A decision that was favorable in part, and unfavorable in part.

Examples:

- Approved, but for a closed period of disability (no ongoing benefits)
- Approved, but with a later disability onset date

# What Does Notice A2 Say?

- Informs class member about the settlement
- **Request form:** Does the class member want their closed claim readjudicated?
- **Representative Notification Request form:** To have SSA send a copy of the notice to the representative on the closed claim.
- **Deadline to return request form:** 180 days from date of receipt.
  - Mailing deadline. USPS Certificate of Mailing at \$1.35, Signature Confirmation at \$2.90/\$2.45, Certified Mail at \$3.35.
  - Remember good cause for returning the request form late. 20 CFR §§ 404.911, 416.1411



A2

**Social Security Administration**  
Important Information

SOCIAL SECURITY  
[6401 SECURITY BLVD  
BALTIMORE, MD 21235]  
Date:  
BNC:

John Doe  
123 Main St  
Anytown, MD 12345

**NOTICE OF CLASS ACTION SETTLEMENT AND REQUEST FORM**

**You May Be Eligible For Review Of Your Prior Disability Claim If You Return The Enclosed Form Within 180 Days After You Get This Notice.**

You are receiving this notice and request form because of a class action settlement in a lawsuit. The lawsuit alleged the Social Security Administration should not have relied on consultative examination reports from Dr. Frank Chen. Plaintiffs alleged that Dr. Chen's reports were flawed

John Doe  
123 Main St  
Anytown, MD USA 12345

*Hart v. Colvin* REQUEST FORM

**IMPORTANT**

**Return This Form Using the Enclosed Envelope Within 180 Days of Receiving It  
If You Want Us To Review Your Prior Claim.**

Before deciding whether to return this form, be sure to read carefully the attached notice that describes the potential benefits and risks of requesting review of your prior claim. If we review your prior claim, it is possible you could receive a better result, the same result, or a worse result, including a finding that you are not disabled. If you want a representative to assist you, you may wish to speak with that person before deciding whether to return this Request Form.

*Part I: Request That Social Security Review My Prior Claim*

*By signing below, you are requesting that Social Security review your prior claim.*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Telephone Number

*Part II: Updated Address*

*If your current address is different from the one printed at the top of this Request Form, please print your current address information below. Otherwise, you should leave Part II blank:*

*Street Address:*

\_\_\_\_\_

*City, State, and Zip Code*

\_\_\_\_\_

**JUSTICE IN AGING**

FIGHTING SENIOR POVERTY THROUGH LAW

John Doe  
123 Main Street  
Anytown, MD 12345

***Hart v. Colvin* REPRESENTATIVE NOTIFICATION REQUEST FORM**  
**USE THE ENCLOSED PREPAID ENVELOPE TO RETURN THIS FORM**

You can have us send a copy of this notice to the representative who assisted you on your prior claim by checking the box below. If you do not wish for Social Security to send a copy of this notice to your prior representative, you should not mail in this form.

You do not have to send a copy of this notice to your prior representative and may choose to work with any representative you want, or no representative.

If my file shows that I had a representative on my prior claim, I would like Social Security to mail a copy of this notice to him or her.

(Please note: we will not be able to send a copy of this notice to a representative if you did not have a representative on your prior claim, or if that person has been disqualified from appearing in Social Security matters.)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

If class member wants SSA to mail a copy of the notice to the representative on the closed claim.

# A2: Claim Ended at Initial or Reconsideration (DPU process)

Mailing deadline.  
Good cause applies.

Class member returns request form within 180 days of receiving the notice.



DPU sends request for supplemental information to class member. Form to be returned within 60 days of receipt.

Prior to end of the 60 days, can request a reasonable extension of time to submit evidence.



Class member provides supplemental information (if available) to DPU, about the closed period. DPU will not order a new CE.

SSA will set up Disability Processing Unit (DPU) to process *Hart* readjudications.



DPU makes new determination on closed claim, without considering Chen CE.



Class member can appeal.

Note: Appeal goes straight to ALJ, without necessity of Reconsideration for claims that ended at Initial.



If approved for closed claim, can get back benefits.

Only if approved thru end of closed period, DPU will then decide if disability continued from end of closed period to present.



DPU requests evidence from class member on disability from the end of the closed claim to the present. DPU can order a new CE.



If approved for any time period continuing from closed claim, can get benefits for that period. Could be continuing up to the present and ongoing.



DPU makes determination of whether disability continued from end of closed claim to the present.



Class member can appeal.

Note: Appeal goes straight to ALJ, without necessity of Reconsideration for claims that ended at Initial.

# A2: Claim Ended at ALJ or Appeals Council (ALJ process)

Mailing deadline.  
Good cause applies.

Prior to end of the 60 days, can  
request a reasonable extension  
of time to submit evidence.

Class member returns request  
form within 180 days of  
receiving the notice

All claims will be processed at  
ALJ level.

ALJ sends request for  
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class member. Form to be  
returned within 60 days of  
receipt.

Could get benefits for closed claim, plus for any  
time period continuing from closed claim. Benefits  
could continue up to the present and ongoing.

ALJ has discretion to take  
evidence for closed period &  
current period in single  
hearing. ALJ can order new CE.  
If approved thru end of closed  
period, ALJ also determines if  
disability continues to present.

Class member provides  
supplemental information (if  
available) to ALJ, about the  
closed period and up until the  
present.

Class member can appeal to  
Appeals Council. Then to  
federal court.

# A2: Claim Is or Was in District Court (ALJ process)

Preliminary step for claims in district court

Claim pending: File motion for remand to SSA for further proceedings within 90 days of receiving Notice A2.

Claim resulted in final judgment: File 60(b)(6) motion for relief from judgment within 90 days of receiving Notice A2.

For both scenarios, the basis for the motion is that SSA has entered into the *Hart* settlement agreement under which claimant is potentially eligible for relief, and claimant wishes to be eligible for consideration for such relief. If SSA then determines that Dr. Chen's report was afforded weight (i.e., more than no weight) in the ALJ's analysis, SSA will file a notice of non-opposition in response to such a motion.

Mailing deadline.  
Good cause applies.

Class member returns request form within 180 days of receiving the notice

Prior to end of the 60 days, can request a reasonable extension of time to submit evidence.

All claims will be processed at ALJ level.

ALJ sends request for supplemental information to class member. Form to be returned within 60 days of receipt.

Could get benefits for closed claim, plus for any time period continuing from closed claim. Benefits could continue up to the present and ongoing.

ALJ has discretion to take evidence for closed period & current period in single hearing. ALJ can order new CE. If approved thru end of closed period, ALJ also determines if disability continues to present.

Class member provides supplemental information (if available) to ALJ, about the closed period and up until the present.

# Motion for Remand and 60(b)(6) Motion

- Discretionary motion, though no reason to believe that it would not be granted.
- May want to include
  - Copy of notice received,
  - Copy of order granting final approval and subsequent stipulation and order (both on Justice in Aging's website), and
  - Declaration stating that agency has agreed pursuant to Section III.A.2(d) of settlement agreement not to oppose the motion.

# Consider Having SSA Send Notice A2 to Authorized Representative

- A copy of Notice A2 will not be automatically mailed to the authorized representative on the closed claim, if there was one.
- For the authorized representative to receive a copy of the notice, (1) can return the “Representative Notification Form” to SSA, or (2) class member can send a copy to authorized representative.

# Updating Medical Records for the Readjudication

Start process of updating medical records right away, including records from specialists if impairment is in the field of a specialist. If possible, even before sending in request form.

- Can submit request form close to the 180-day deadline, if more time needed to gather records.
- After request form submitted, SSA sends claimant form requesting supplemental evidence on the closed claim.
  - Form due 60 days from date of receipt. Prior to end of the 60 days, can request a reasonable extension of time to submit supplemental evidence.

# To Receive Benefits, Must Also Meet Non-Medical Criteria

In order to get back benefits for closed claim, or to get benefits continuing from end of closed claim, in addition to proving disability:

- SSI: Must meet non-medical criteria (income, assets, etc.)

# For CDRs: Is Medical Improvement Standard Met?

- Initial burden is on SSA to show medical improvement related to the ability to work, from the comparison point decision (CPD, most recent favorable medical decision)
  - “medical improvement” = a decrease in the medical severity of impairment(s) which was present at CPD. Must be based on improvement in symptoms/signs/laboratory findings.
- Without the Dr. Chen CE, has SSA met its burden?
- 20 CFR §§ 404.1594, 416.994

# Considerations for Electing Relief

- If received benefits in the past only, there conceivably is a limited risk.
- If currently receiving benefits, then possible risk.

# Possible Risk

- **Partially favorable decision (likely a closed period of disability in the past):** Weigh the possible risk that SSA may look at the favorable part of the prior claim and decide that part against the individual.
- **If in current pay now:** Weigh the possible risk that SSA may look beyond the *Hart* readjudication and review the later favorable decision.
  - Remember: early retirement and SSI on the basis of age are not current pay, no “current pay” risk.

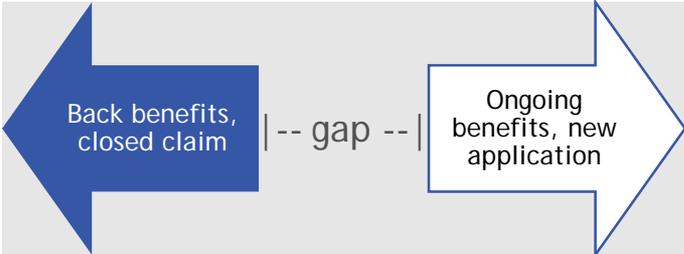
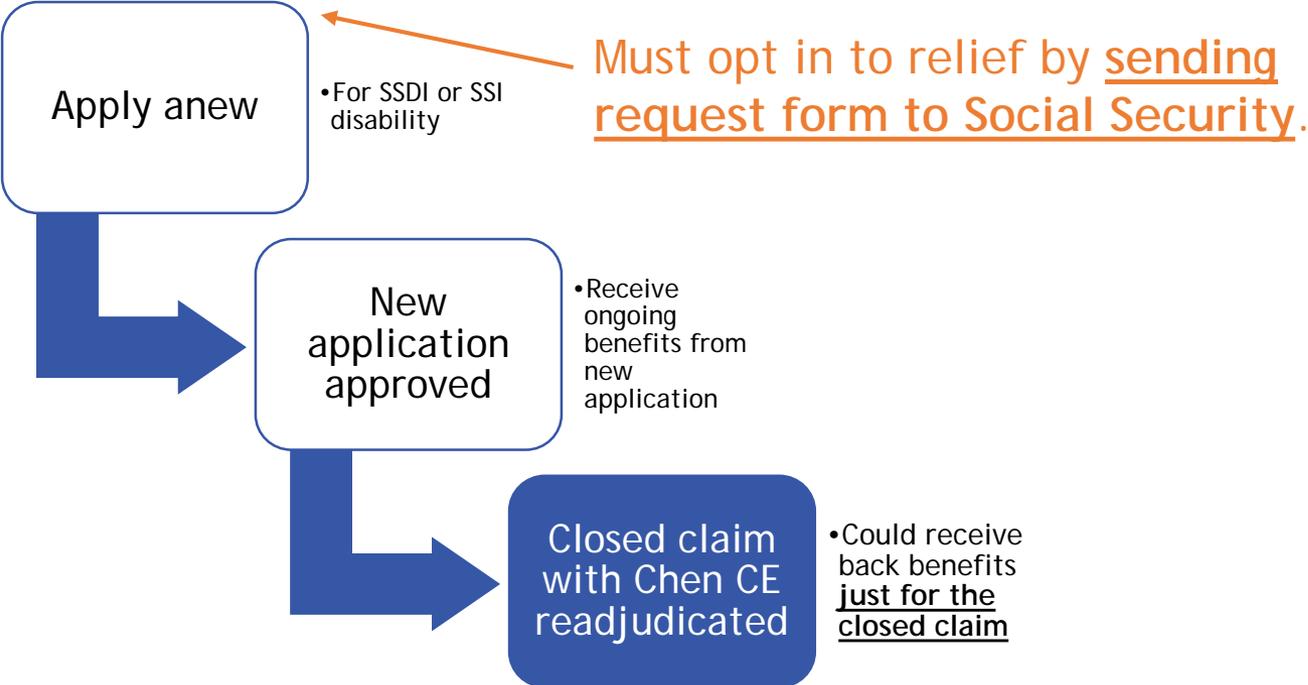
# Details for Notice B and B2 (Group 2)

Older closed claims (exam in 2007-2010)

# B and B2 Relief

- Class members receiving Notice B or B2 must first file a new disability application and be approved on that new application. Full appeal rights as on any new claim.
- Must meet either 20/40 DIB requirement or SSI financial eligibility at time of new claim.
- If approved on new application, class members are eligible for readjudication of closed claim, without the Dr. Chen CE. No right to appeal readjudication decision.

# The Relief: Notice B and B2



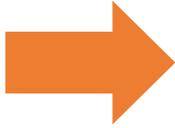
# Notice B Detailed Process

# Who Will Receive Notice B?

- Individual examined by Dr. Chen between January 1, 2007 and December 31, 2010
- Claim was closed as of April 25, 2017
- Unfavorable decision
- A copy of the notice will not be mailed to the authorized representative on the closed claim.

# What Does Notice B Say?

- Informs class member about the settlement
- **Request form:** Class member intends to file new application for SSDI or SSI within 180 days of receiving the notice. If their new application is approved, class member wants SSA to readjudicate their closed claim.
- **Deadline to return request form:** 90 days from date of receipt.
  - Mailing deadline. USPS Certificate of Mailing at \$1.35, Signature Confirmation at \$2.90/\$2.45, Certified Mail at \$3.35.
  - Remember good cause for returning the request form late. 20 CFR §§ 404.911, 416.1411
- 60 days after mailing of notice, if class member has not submitted the request form, then SSA will mail a second notice, which includes a copy of the original notice and request form. 60-day notice does not toll 90-day deadline to return request form.



B

**Social Security Administration**  
Important Information

SOCIAL SECURITY  
[6401 SECURITY BLVD  
BALTIMORE, MD 21235]  
Date:  
BNC:

John Doe  
123 Main St  
Anytown, MD 12345

**NOTICE OF CLASS ACTION SETTLEMENT AND REQUEST FORM**

**You May Be Eligible For Review Of Your Prior Disability Claim –  
Please Return The Enclosed Form Within 90 Days After You Get This Notice**

You are receiving this notice and request form because of a class action settlement in a lawsuit. The lawsuit alleged the Social Security Administration should not have relied on examination reports from Dr. Frank Chen. Plaintiffs alleged that Dr. Chen's reports were flawed in important

John Doe  
123 Main St  
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***Hart v. Colvin* REQUEST FORM**

**IMPORTANT**

**Return This Form Using the Enclosed Envelope Within 90 Days of Receiving It  
If You Want Us To Review Your Prior Claim**

*Part I: Request That Social Security Review My Prior Claim.*

*I believe that I am currently disabled, and I intend to file a new claim for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) (or both) within 180 days of the date I received the attached Notice. If I file a new claim for SSDI or SSI (or both), and am found disabled on my new claim, I request that the Social Security Administration review my prior claim.*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Telephone Number

***Part II: Updated Address***

*If your address is different from the one printed at the top of this Request Form, please print your updated address information below. Otherwise, you should leave Part II blank:*

*Street Address:*

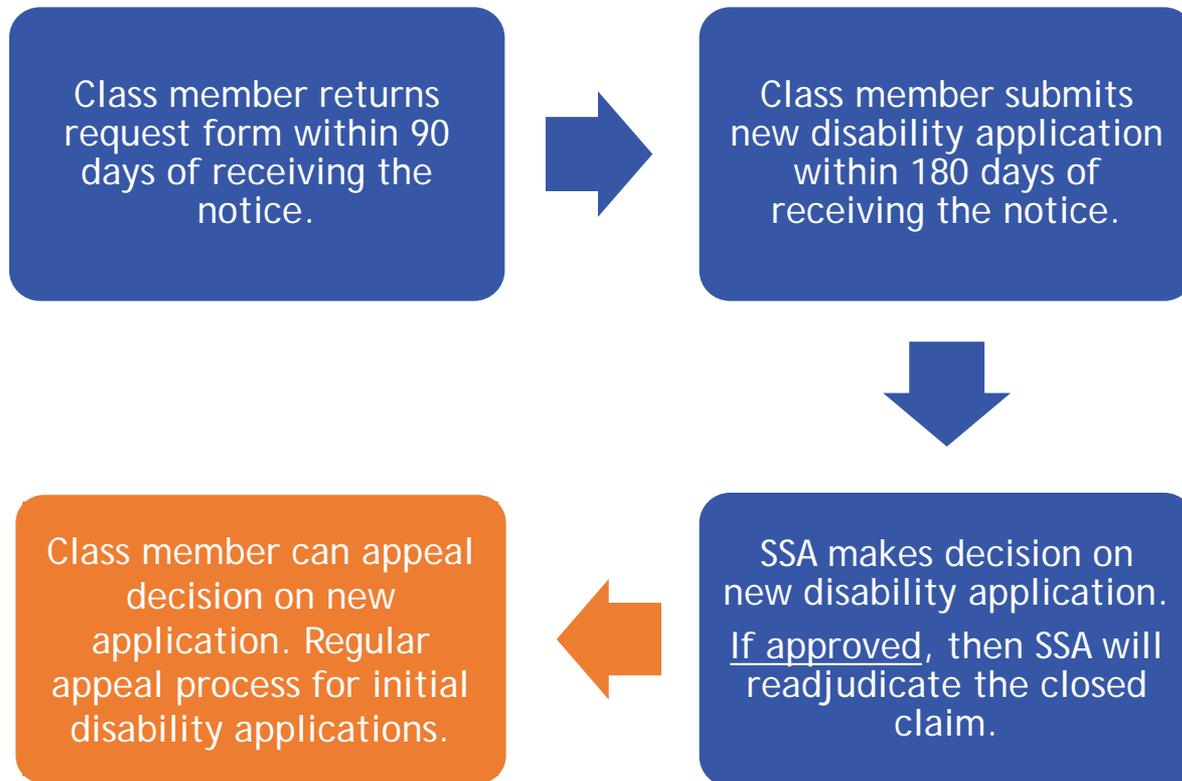
\_\_\_\_\_

*City, State, and Zip Code*

\_\_\_\_\_

# B: Claim Ended at Appeals Council or Earlier

Mailing deadline.  
Good cause applies.



Only if new disability application approved, then DPU will readjudicate the closed claim.



DPU sends class member request for additional evidence on closed claim. DPU will not order a new CE.



Class member provides additional evidence (if available) to DPU.



DPU makes new determination on closed claim, without considering Chen CE.

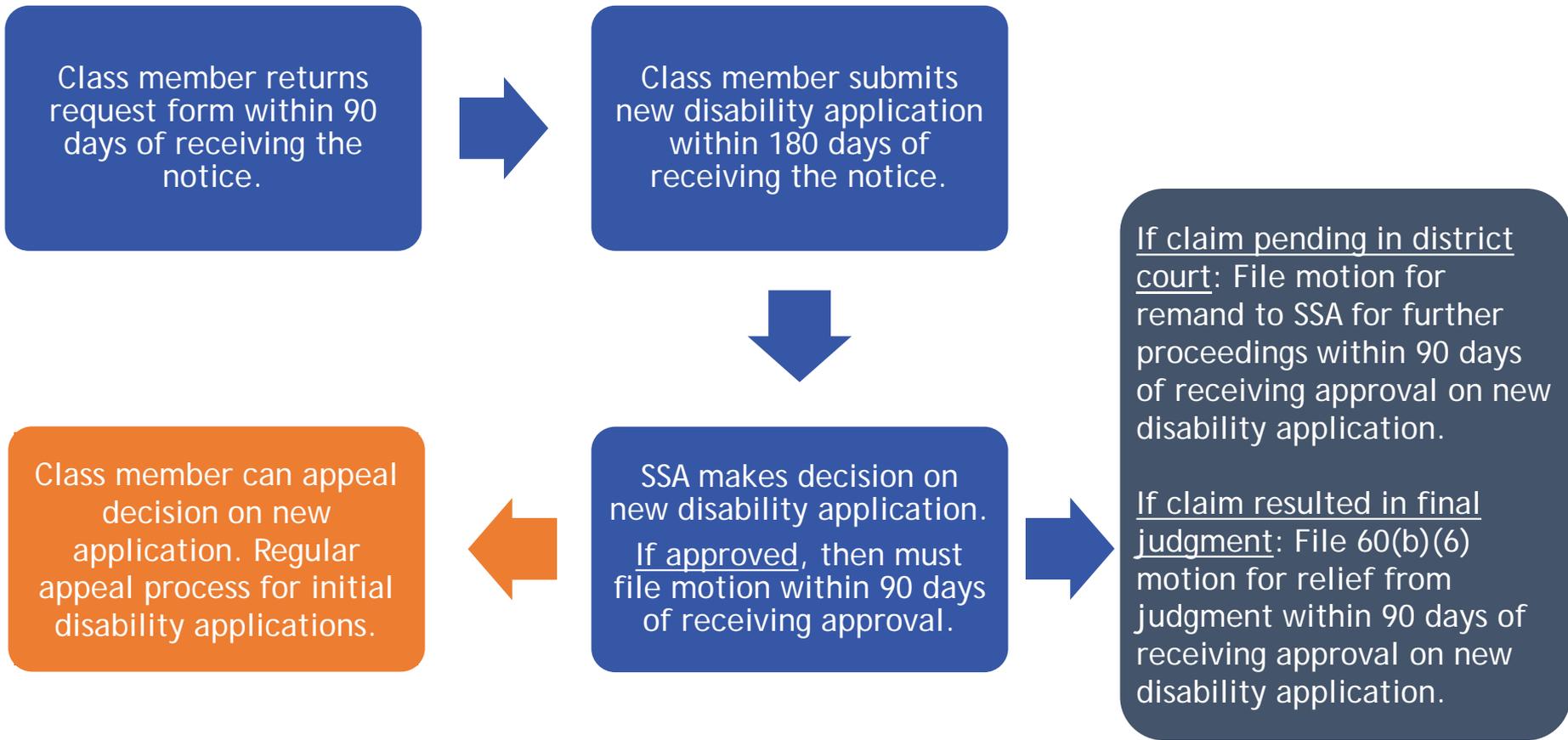
Could get benefits for all or any part of the previously adjudicated period.



No right to appeal this decision.

# B: Claim Is or Was in District Court

Mailing deadline.  
Good cause applies.



Only if new disability application approved and appropriate motion filed within 90 days, then DPU will readjudicate the closed claim.



DPU sends class member request for additional evidence on closed claim. DPU will not order a new CE.



Class member provides additional evidence (if available) to DPU.



DPU makes new determination on closed claim, without considering Chen CE.

Could get benefits for all or any part of the previously adjudicated period.



No right to appeal this decision.

# Motion for Remand and 60(b)(6) Motion

- Discretionary motion, though no reason to believe that it would not be granted.
- May want to include
  - Copy of notice received,
  - Copy of order granting final approval and subsequent stipulation and order (both on Justice in Aging's website), and
  - Declaration stating that agency has agreed pursuant to Section III.B.2(c) of settlement agreement not to oppose the motion.

# Consider Contacting the Authorized Representative on the Closed Claim

- A copy of Notice B will not be mailed to the authorized representative on the closed claim, if there was one.
- For the authorized representative to receive a copy of the notice, class member must send the notice to them.

# Updating Medical Records for the Readjudication

Start process of updating medical records right away, including records from specialists if impairment is in the field of a specialist. If possible, even before sending in request form.

- Can submit request form close to the 90-day deadline, if more time needed to gather records.
- Remember, required first step is filing new application within 180 days, and being approved. If new application is approved, SSA will then ask class member to submit any additional evidence relevant to the closed claim.

# To Receive Benefits, Must Also Meet Non-Medical Criteria

For the new disability application and for back benefits on the closed claim, in addition to proving disability:

- SSI: Must meet non-medical criteria (income, assets, etc.)
- SSDI: Must be disability insured and meet recency-of-work test

# For CDRs: Is Medical Improvement Standard Met?

- Initial burden is on SSA to show medical improvement related to the ability to work, from the comparison point decision (CPD, most recent favorable medical decision)
  - “medical improvement” = a decrease in the medical severity of impairment(s) which was present at CPD. Must be based on improvement in symptoms/signs/laboratory findings.
- Without the Dr. Chen CE, has SSA met its burden?
- 20 CFR §§ 404.1594, 416.994

# Considerations for Electing Relief

- If never received benefits in past or present, no risk in electing relief and filing a new disability application now (no benefits at risk).
- If received benefits in the past only, there conceivably is a limited risk.
- If currently receiving benefits, then possible risk.

# Possible Limited Risk

- If subsequent favorable claim and SSA is within the time for reopening that claim, possible risk:
  - Came into current pay after 10/14/15 on subsequent claim. Remember: early retirement and SSI on the basis of age are not current pay, no “current pay” risk.
  - Had separate closed period of disability.

# Notice B2 Detailed Process

# Who Will Receive Notice B2?

- Individual examined by Dr. Chen between January 1, 2007 and December 31, 2010
- Claim was closed as of **April 25, 2017**
- Partially favorable decision
- Class member can ask SSA to mail a copy of the notice to the authorized representative on the closed claim.

# Notice B2 are Partially Favorable Decisions

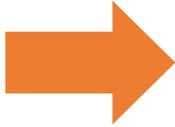
A decision that was favorable in part, and unfavorable in part.

Examples:

- Approved, but for a closed period of disability (no ongoing benefits)
- Approved, but with a later disability onset date

# What Does Notice B2 Say?

- Informs class member about the settlement
- **Request form:** Class member intends to file new application for SSDI or SSI within 180 days of receiving the notice. If their new application is approved, class member wants SSA to readjudicate their closed claim.
- **Representative Notification Request form:** To have SSA send a copy of the notice to the representative on the closed claim.
- **Deadline to return request form:** 180 days from date of receipt.
  - Mailing deadline. USPS Certificate of Mailing at \$1.35, Signature Confirmation at \$2.90/\$2.45, Certified Mail at \$3.35.
  - Remember good cause for returning the request form late. 20 CFR §§ 404.911, 416.1411



B2

**Social Security Administration**  
Important Information

SOCIAL SECURITY  
[6401 SECURITY BLVD  
BALTIMORE, MD 21235]  
Date:  
BNC:

John Doe  
123 Main St  
Anytown, MD 12345

**NOTICE OF CLASS ACTION SETTLEMENT AND REQUEST FORM**

**You May Be Eligible For Review Of Your Prior Disability Claim If You Return The Enclosed Form Within 180 Days After You Get This Notice.**

You are receiving this notice and request form because of a class action settlement in a lawsuit. The lawsuit alleged the Social Security Administration should not have relied on consultative examination reports from Dr. Frank Chen. Plaintiffs alleged that Dr. Chen's reports were flawed

John Doe  
123 Main St  
Anytown, MD 12345

### *Hart v. Colvin* REQUEST FORM

#### **IMPORTANT**

**Return This Form Using the Enclosed Envelope Within 180 Days of Receiving It  
If You Want Us To Review Your Prior Claim**

Before deciding whether to return this form, be sure to read carefully the attached notice that describes the potential benefits and risks of requesting review of your prior claim. If we review your prior claim, it is possible you could receive a better result, the same result, or a worse result, including a finding that you are not disabled. If you want a representative to assist you, you may wish to speak with that person before deciding whether to return this Request Form.

#### *Part I: Request That Social Security Review My Prior Claim*

*I believe that I am currently disabled, and I intend to file a new claim for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) (or both) within 180 days of the date I received the attached notice. If I file a new claim for SSDI or SSI (or both), timely and I am found disabled on my new claim, and am otherwise eligible, I request that the Social Security Administration review my prior claim.*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Telephone Number

#### *Part II: Updated Address*

*If your current address is different from the one printed at the top of this request form, please print your current address information below. Otherwise, you should leave Part II blank:*

*Street Address:*

\_\_\_\_\_

*City, State, and Zip Code*

\_\_\_\_\_

John Doe  
123 Main Street  
Anytown, MD 12345

***Hart v. Colvin* REPRESENTATIVE NOTIFICATION REQUEST FORM**  
**USE THE ENCLOSED PREPAID ENVELOPE TO RETURN THIS FORM**

You can have us send a copy of this notice to the representative who assisted you on your prior claim by checking the box below. If you do not wish for Social Security to send a copy of this notice to your prior representative, you should not mail in this form.

You do not have to send a copy of this notice to your prior representative and may choose to work with any representative you want, or no representative.

If my file shows that I had a representative on my prior claim, I would like Social Security to mail a copy of this notice to him or her.

(Please note: we will not be able to send a copy of this notice to a representative if you did not have a representative on your prior claim, or if that person has been disqualified from appearing in Social Security matters.)

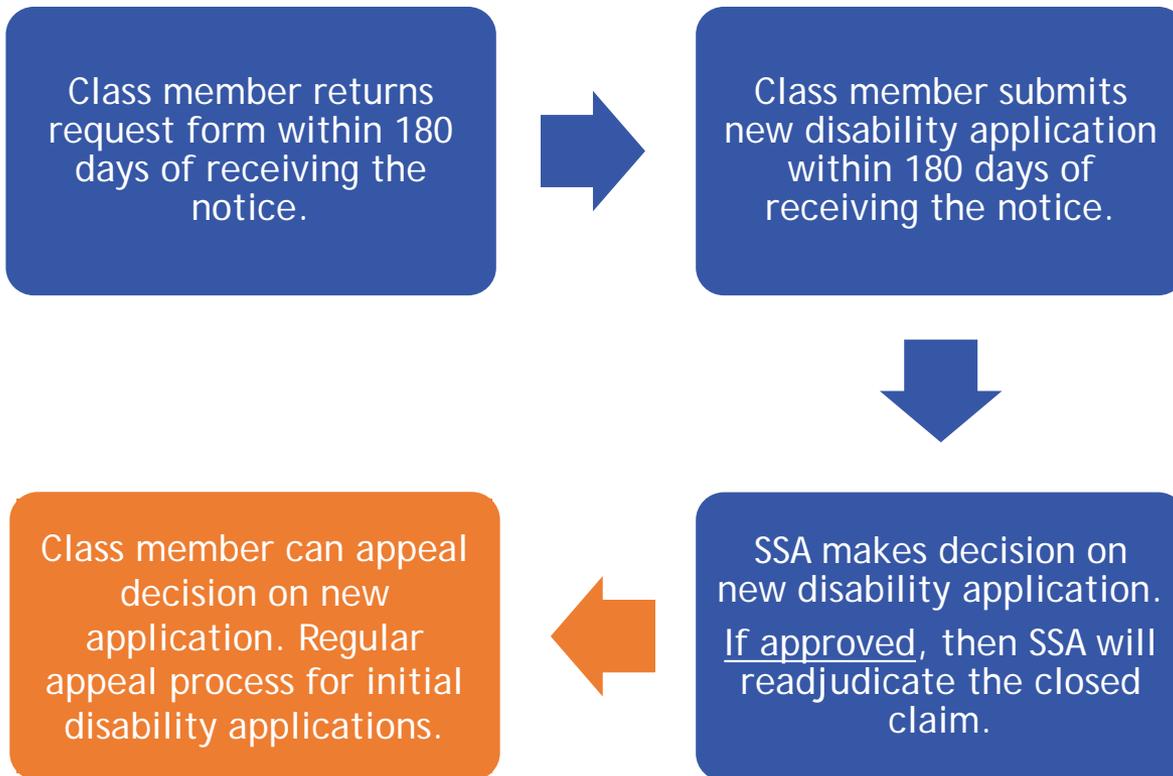
\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

If class member wants SSA to mail a copy of the notice to the representative on the closed claim.

# B2: Claim Ended at Appeals Council or Earlier

Mailing deadline.  
Good cause applies.



Only if new disability application approved, then DPU will readjudicate the closed claim.



DPU sends class member request for additional evidence on closed claim. DPU will not order a new CE.



Class member provides additional evidence (if available) to DPU.



DPU makes new determination on closed claim, without considering Chen CE.

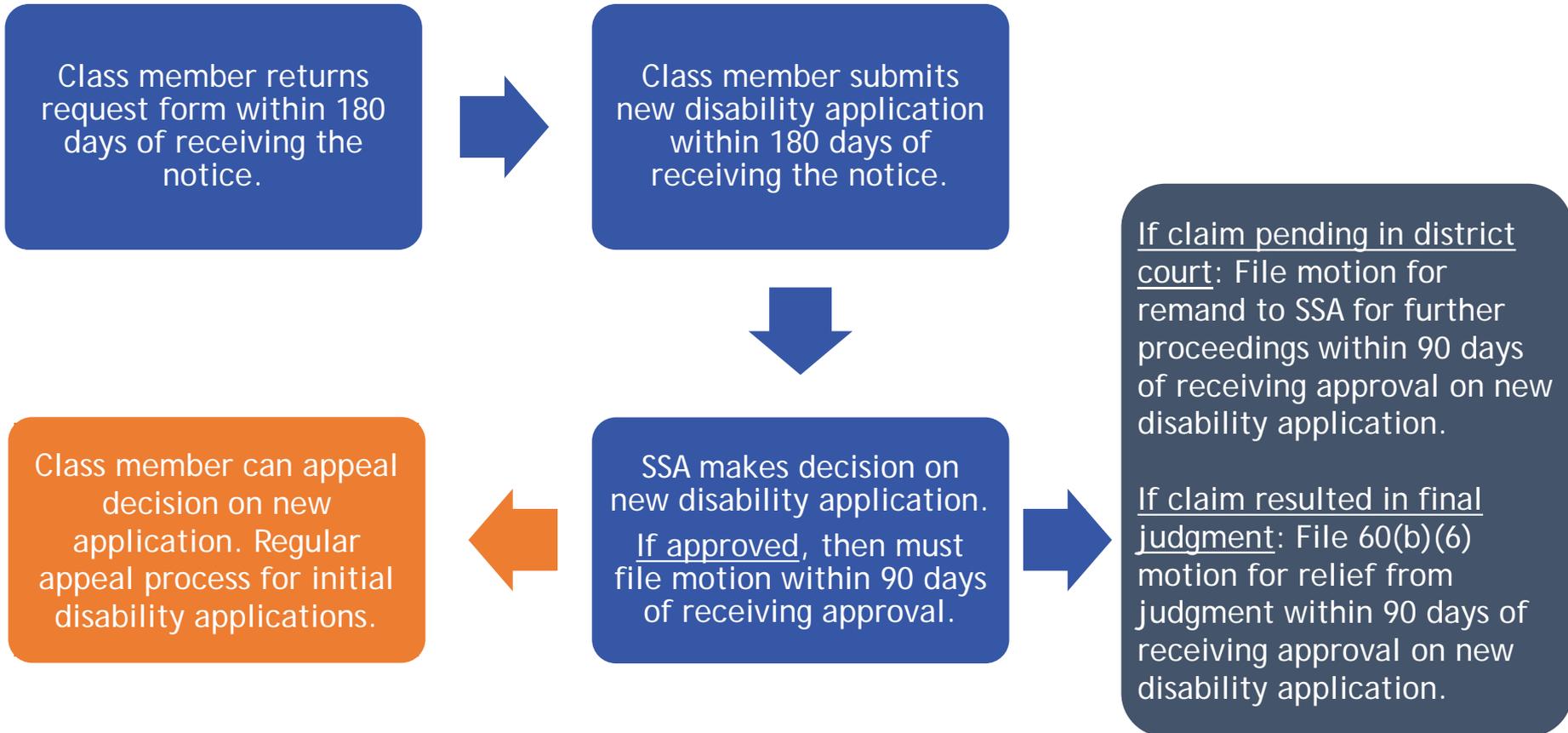
Could get benefits for all or any part of the previously adjudicated period.



No right to appeal this decision.

# B2: Claim Is or Was in District Court

Mailing deadline.  
Good cause applies.



Only if new disability application approved and appropriate motion filed within 90 days, then DPU will readjudicate the closed claim.



DPU sends class member request for additional evidence on closed claim. DPU will not order a new CE.



Class member provides additional evidence (if available) to DPU.



DPU makes new determination on closed claim, without considering Chen CE.

Could get benefits for all or any part of the previously adjudicated period.



No right to appeal this decision.

# Motion for Remand and 60(b)(6) Motion

- Discretionary motion, though no reason to believe that it would not be granted.
- May want to include:
  - Copy of notice received;
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  - Declaration stating that agency has agreed pursuant to Section III.B.2(c) of settlement agreement not to oppose the motion.

# Consider Having SSA Send Notice B2 to Authorized Representative

- A copy of Notice B2 will not be automatically mailed to the authorized representative on the closed claim, if there was one.
- For the authorized representative to receive a copy of the notice, (1) can return the “Representative Notification Form” to SSA, or (2) class member can send a copy to authorized representative.

# Updating Medical Records for the Readjudication

Start process of updating medical records right away, including records from specialists if impairment is in the field of a specialist. If possible, even before sending in request form.

- Can submit request form close to the 180-day deadline, if more time needed to gather records.
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- Without the Dr. Chen CE, has SSA met its burden?
- 20 CFR §§ 404.1594, 416.994

# Considerations for Electing Relief

- If received benefits in the past only, there conceivably is a limited risk.
- If currently receiving benefits, then possible risk.

# Possible Risks

- **Partially favorable decision (likely a closed period of disability in the past):** Weigh the possible risk that SSA may look at the favorable part of the prior claim and decide that part against the individual.
- **If in current pay now:** Weigh the possible risk that SSA may look beyond the *Hart* readjudication and review the later favorable decision.
  - Remember: early retirement and SSI on the basis of age are not current pay, no “current pay” risk.

# General Questions, and Resources

# Question: Applicability of New Medical Evidence Rule?

- Revised rule on the evaluation of medical evidence, published earlier this year.
  - Adjudicators will give no special weight to the medical opinions of a claimant's treating doctors. Instead, medical evidence will be evaluated for "persuasiveness," based most importantly on consistency and supportability.
- SSA's application of new rule vs. prior treating source rule depends on date of filing of the claim

New rule: 20 CFR §§ 404.1520c, 416.920c

Treating source rule: 20 CFR §§ 404.1527, 416.927

# Answer: Treating Source Rule Applies to Almost All

- Notice A and A2: For all relief under the settlement, treating source rule applies (treating source can get controlling weight)
- Notice B and B2:
  - For new disability application filed on or after 3/27/17, SSA will apply new medical evidence rule
  - For new disability application filed before 3/27/17, treating source rule applies
  - For readjudication of the closed claim, treating source rule applies

# Waiver Rules Apply

- If SSA does readjudicate favorable part of prior decision, or look beyond readjudication under the settlement, resulting in termination/overpayment → Normal termination appeal and overpayment appeal and waiver provisions apply.
- **Reminder on waiver rules:** if requested benefits continuation on appeal of a disability cessation and lost the appeal, does not establish fault unless appeal was filed in bad faith (individual knew that she or he was not disabled). For someone in that situation who is financially eligible for SSI, waiver should be virtually automatic.
  - 20 CFR §§ 404.1597a(j)(3), 416.996(g)(2)

# Prospective Relief: Study of CE Monitoring Process

- Settlement requires SSA to do a study of the processes through which it monitors DDS's CE process.
  - In process now
- SSA must issue a document identifying processes for notifying adjudicators when an individual CE has been disqualified for conduct determined to undermine the reliability of that provider's reports.
  - Likely August 2018

# Who to Contact with Questions or Problems?

- Class member notices will include a toll-free number for SSA, which should be able to help with any questions about the notice, the relief, or the process to obtain relief.
- *Hart* class counsel info line: (800) 805-9241
  - If having problems with obtaining relief under the settlement, or other concerns
  - This number will also be included in the notices that SSA sends to class members

# Additional Resources

- Justice in Aging: <http://www.justiceinaging.org/our-work/litigation/hart-v-colvin-litigation/>
  - Includes case documents and detailed advocate guide
  - Additional information: Trinh Phan, [tphan@justiceinaging.org](mailto:tphan@justiceinaging.org) or 510-931-4203



# Questions?

Trinh Phan  
[tphan@justiceinaging.org](mailto:tphan@justiceinaging.org)

Gerald McIntyre  
[gmcintyre@justiceinaging.org](mailto:gmcintyre@justiceinaging.org)



@justiceinaging