STATE OF NEW YORK

6361

2021-2022 Regular Sessions

IN ASSEMBLY

March 16, 2021

Introduced by M. of A. REYES, FERNANDEZ, J. RIVERA, DICKENS, COLTON, JEAN-PIERRE, SAYEGH, DeSTEFANO, GOTTFRIED, DILAN -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the retirement and social security law, in relation to criteria for medical examinations to determine disability status

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The retirement and social security law is amended by adding a new section 65 to read as follows:

§ 65. Criteria for medical examinations. a. In instances where an applicant for disability benefits under this title is given a medical examination, the health care practitioner who performs such examination of the applicant shall:

1. review and consider all records or information provided by the applicant or his or her treating health care practitioner that are pertinent to the claimed medical condition;

2. make a specific diagnosis as evidenced by medically appropriate tests or evaluations in determination of the applicant's claimed condition;

3. render to the applicant and the comptroller, an opinion, particularizing the presence or absence of the alleged condition;

4. in the event that he or she identifies a condition, other than the alleged condition, that may interfere with the individual's ability to fully engage in work activities, the practitioner shall report such condition; and

5. determine whether the individual is:

(a) disabled and eligible for benefits under this title; or

(b) neither disabled nor work limited.

b. If the practitioner to whom the applicant is referred issues an opinion that differs from the applicant's treating health care practi-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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tioner, the practitioner shall provide a written determination that specifies why the practitioner disagrees with the applicant's treating health care practitioner's disability determination and present evidence that supports the opinion.

c. In the event the practitioner to whom the applicant is referred issues an opinion that differs from the applicant's treating health care practitioner's opinion, the applicant's treating health care practitioner's opinion shall be generally controlling, subject to, but not limited to, the following factors:

1. the length and frequency of the treatment provided;

2. consistency of the opinion with the record as a whole;

3. the degree to which the opinion is supported by concrete evidence; and

4. such practitioner's specialty.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.