

(c) We revise the Federal reviewing official's decision under subpart G of this part.

§ 405.240 Sunset of this subpart.

(a) If you filed a request for review by a Federal reviewing official and we transferred your claim to the Office of the Federal Reviewing Official on or before March 23, 2008, the Federal reviewing official will review and issue a decision on your claim.

(b) If you have received an initial determination under subpart B of this part, we will process any request for additional administrative review not described in paragraph (a) of this section as either a request for reconsideration by the State agency or a request for hearing before an administrative law judge if your State uses the testing procedures under §§ 404.906 and 416.1406 of this chapter. In any hearing before an administrative law judge on your claim, and in any further review of your claim, we will follow the procedures in this part.

(c) This subpart will no longer be effective the day after a Federal reviewing official issues a decision on the last of the claims accepted for review under paragraph (a) of this section.

(d) If compelling evidence shows that the Federal reviewing official process is efficient, effective, and sustainable given available Agency resources, the Commissioner may reinstate the Federal reviewing official process by publishing a notice of proposed rule-making and final rule in the FEDERAL REGISTER.

[73 FR 2415, Jan. 15, 2008; 73 FR 10381, Feb. 27, 2008]

Subpart D—Administrative Law Judge Hearing

§ 405.301 Hearing before an administrative law judge—general.

(a) This subpart explains what to do if you are dissatisfied with a decision by a Federal reviewing official, a reconsidered determination you received as a result of § 405.240 of this part, or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4)

of this chapter. In it, we describe how you may ask for a hearing before an administrative law judge, and what procedures we will follow when you ask for a hearing.

(b) The Commissioner will appoint an administrative law judge to conduct the hearing. If circumstances warrant after making the appointment (for example, if the administrative law judge becomes unavailable), the Commissioner may assign your claim to another administrative law judge.

(c) You may examine the evidence used in making the decision or determination under review, submit evidence, appear at the hearing, and present and question witnesses. The administrative law judge may ask you questions and will issue a decision based on the hearing record. If you waive your right to appear at the hearing, the administrative law judge will make a decision based on the evidence that is in the file, any new evidence that is timely submitted, and any evidence that the administrative law judge obtains.

[71 FR 16446, Mar. 31, 2006, as amended at 73 FR 2415, Jan. 15, 2008]

§ 405.305 Availability of a hearing before an administrative law judge.

You may request a hearing before an administrative law judge if you are dissatisfied with the Federal reviewing official's decision on your disability claim, the reconsidered determination you received as a result of § 405.240 of this part, or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter.

[73 FR 2415, Jan. 15, 2008]

§ 405.310 How to request a hearing before an administrative law judge.

(a) *Written request.* You must request a hearing by filing a written request. You should include in your request—

(1) Your name and social security number,

(2) If you have filed a claim for benefits based on disability under title II of the Act under an account other than your own, the name and social security

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number of the wage earner under whose account you are filing,

(3) The specific reasons you disagree with the decision made by the Federal reviewing official,

(4) A statement of the medically determinable impairment(s) that you believe prevents you from working,

(5) Additional evidence that you have available to you, and

(6) The name and address of your representative, if any.

(b) *Time limit for filing request.* An administrative law judge will conduct a hearing if you request one in writing no later than 60 days after the date you receive notice of the Federal reviewing official's decision, the reconsidered determination you received as a result of § 405.240 of this part, or the initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter (or within the extended time period if we extend the time as provided in paragraph (d) of this section). The administrative law judge may decide your disability claim without an oral hearing under the circumstances described in § 405.340.

(c) *Place for filing request.* You should submit a written request for a hearing at one of our offices. If you have a disability claim under title II of the Act, you may also file the request at the Veterans Administration Regional Office in the Philippines, or if you have 10 or more years of service, or at least five years of service accruing after December 31, 1995, in the railroad industry, an office of the Railroad Retirement Board.

(d) *Extension of time to request a hearing.* If you want a hearing before an administrative law judge, but you do not request it timely, you may ask us for more time to request a hearing. Your request for an extension of time must be in writing and must give the reasons the request for review was not filed, or cannot be filed, in time. If you show us that you have good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 405.20 of this part.

(e) *Waiver of the right to appear.* After you submit your request for a hearing,

you may ask the administrative law judge to decide your claim without a hearing, as described in § 405.340(b). The administrative law judge may grant the request unless he or she believes that a hearing is necessary. You may withdraw this waiver of your right to appear at a hearing any time before notice of the hearing decision is mailed to you, and we will schedule a hearing as soon as practicable.

[71 FR 16446, Mar. 31, 2006, as amended at 73 FR 2415, Jan. 15, 2008]

§ 405.315 Time and place for a hearing before an administrative law judge.

(a) *General.* The administrative law judge sets the time and place for the hearing. The administrative law judge will notify you of the time and place of the hearing at least 75 days before the date of the hearing, unless you agree to a shorter notice period. If it is necessary, the administrative law judge may change the time and place of the hearing. If the administrative law judge changes the time and place of the hearing, he or she will send you reasonable notice of the change.

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(c) *Determination regarding in-person or video teleconference appearance of witnesses at the hearing.* In setting the time and place of the hearing, the administrative law judge will determine whether you or any other person will appear at the hearing in person or by video teleconferencing. If you object to appearing personally by video teleconferencing, we will re-schedule the hearing to a time and place at which you may appear in person before the administrative law judge. If you object to any other person appearing by video teleconferencing, the administrative law judge will decide whether to have that person appear in person or by video teleconference. Section 405.350 explains how you and witnesses appear and present evidence at hearings. Except when you object to appearing by video teleconferencing as described below, the administrative law judge will direct that a person's appearance