

## Social Security Administration

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have which would support a revision of a determination.

[48 FR 6293, Feb. 10, 1983, as amended at 55 FR 8456, Mar. 8, 1990; 62 FR 38452, July 18, 1997]

### **PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS**

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AUTHORITY: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

SOURCE: 71 FR 16446, Mar. 31, 2006, unless otherwise noted.

## Subpart A—Introduction, General Description, and Definitions

### § 405.1 Introduction.

(a) *General.* This part explains our procedures for adjudicating the disability portion of initial claims for entitlement to benefits based on disability under title II of the Social Security Act or for eligibility for supplemental security income payments based on disability or blindness under title XVI of the Act. All adjudicators derive their authority from the Commissioner and have the authority to find facts and, if appropriate, to conduct a fair and impartial hearing in accordance with section 205(b) of the Act.

(b) *Explanation of the administrative review process.* Generally, the administrative review process consists of several steps, which must be requested within certain time periods. The administrative review process steps are:

(1) *Initial determination.* When you claim disability benefits and a period of disability under title II of the Act or eligibility for disability or blindness payments under title XVI of the Act, we will make an initial determination on your claim. See §§ 404.902–.903 and 416.1402–.1403 of this chapter for a description of what is and what is not an initial determination. We use the procedures in part 404 subpart J of this chapter, part 416 subpart N of this chapter, or both, for your initial determination.

(2) *Reconsideration.* If you are dissatisfied with the initial determination, you may ask us to reconsider it. We use the procedures in part 404 subpart J of this chapter, part 416 subpart N of this chapter, or both, for your reconsideration determination. You must follow the procedure in § 404.909 or § 416.1409 of this chapter to request reconsideration.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with the reconsidered determination, you may request a hearing before an administrative law judge. The administrative law judge will use the procedures in subpart D of this part.

(4) *Appeals Council review.* If you or any other party to the hearing is dissatisfied with the administrative law judge's decision or with the adminis-

trative law judge's dismissal of a hearing request, you may request that the Appeals Council review that action. The Appeals Council also may initiate review on its own motion. The Appeals Council will use the procedures in subparts E through G of this part for its review.

(5) *Federal court review.* If you have pursued your claim through all levels of our administrative process and are dissatisfied with our final decision, you may request judicial review by filing an action in Federal district court.

(c) *Nature of the administrative review process—(1) Non-adversarial proceeding.* In making a determination or decision on your claim, we conduct the administrative review process in a non-adversarial manner.

(2) *Evidence considered and right to representation.* Subject to §§ 405.331 and 405.430, you must submit evidence and information to us (*see* §§ 404.1512 and 416.912 of this chapter). We also will consider any relevant information that we have in our records. To help you present your claim to us, you may have someone represent you, including an attorney.

(3) *Evidentiary standards applied.* When we make a determination or decision on your disability claim, we will apply a preponderance of the evidence standard, except that the Appeals Council will review findings of fact under the substantial evidence standard.

(4) *Clarity of determination or decision.* When we adjudicate your claim, the notice of our determination or decision will explain in clear and understandable language the specific reasons for allowing or denying your claim.

(5) *Consequences of failing to timely follow this administrative appeals process.* If you do not seek timely review at the next step required by these procedures, you will lose your right to further administrative review and your right to judicial review, unless you can show good cause under § 405.20 for your failure to request timely review.

(d) *Expedited appeals process.* You may use the expedited appeals process if you have no dispute with our findings of fact and our application and interpretation of the controlling law, but you

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believe that a part of that law is unconstitutional. This process permits you to seek our agreement to allow you to go directly to a Federal district court so that the constitutional issue(s) may be resolved.

[71 FR 16446, Mar. 31, 2006, as amended at 76 FR 24808, May 3, 2011; 80 FR 14837, Mar. 20, 2015]

### § 405.5 Definitions.

As used in this part:

*Act* means the Social Security Act, as amended.

*Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105 who is employed by the Social Security Administration.

*Commissioner* means the Commissioner of Social Security, or his or her designee.

*Date you receive notice* means five days after the date on the notice, unless you show us that you did not receive it within the five-day period.

*Day* means calendar day, unless otherwise indicated.

*Decision* means the decision made by an administrative law judge, attorney advisor, or the Appeals Council.

*Disability claim* or *claim* means:

(1) An application for benefits that is based on whether you are disabled under title II of the Act, or

(2) An application for supplemental security income payments that is based on whether you are disabled or blind under title XVI of the Act.

(3) For purposes of this part, the terms “disability claim” or “claim” do not include a continuing disability review or age-18 redetermination.

*Document* includes books, records, correspondence, papers, as well as forms of electronic media such as video tapes, CDs, and DVDs.

*Evidence* means evidence as defined under §§ 404.1512 and 416.912 of this chapter.

*Preponderance of the evidence* means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

*Substantial evidence* means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

*Vacate* means to set aside a previous action.

*We, us, or our* refers to the Social Security Administration.

*You or your* refers to the person who has filed a disability claim and, where appropriate, his or her authorized representative.

[76 FR 24808, May 3, 2011]

### § 405.10 [Reserved]

### § 405.20 Good cause for extending deadlines.

(a) If you want us to extend the deadline to request administrative or judicial review, you must establish that there is good cause for missing the deadline. To establish good cause, you must show us that—

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from filing a timely request; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from filing a timely request.

(b) Examples of circumstances that, if documented, may establish good cause include, but are not limited to, the following:

(1) You were seriously ill, and your illness prevented you from contacting us in person, in writing, or through a friend, relative, or other person;

(2) There was a death or serious illness in your immediate family;

(3) Important records were destroyed or damaged by fire or other accidental cause;

(4) You were trying very hard to find necessary information to support your claim but did not find the information within the stated time period;

(5) Within the time limit for requesting further review, you asked us for additional information explaining our action, and within 60 days of receiving the explanation, you requested a review;

(6) We gave you incorrect or incomplete information about when and how to request administrative review or to file a civil suit;

(7) You did not receive notice of the determination or decision; or

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(8) You sent the request to another Government agency in good faith within the time limit, and the request did not reach us until after the time period had expired.

[71 FR 16446, Mar. 31, 2006, as amended at 76 FR 24808, May 3, 2011]

**§ 405.25 Disqualification of disability adjudicators.**

Adjudicators at all levels of the administrative review process recognize the need for fair and impartial consideration of the merits of your claim. Any adjudicator who has any personal or financial interest in the matter pending for determination or decision will withdraw from conducting any proceeding with respect to your disability claim. If the adjudicator so withdraws, we will assign your claim to another adjudicator for a determination or decision.

**§ 405.30 Discrimination complaints.**

At all levels of the administrative review process, we do not give inappropriate consideration to your race, color, national origin, age, sex, religion, or nature of your impairment(s). If you believe that an adjudicator has improperly discriminated against you, you may file a discrimination complaint with us. You must file any such complaint within 180 days of the date upon which you became aware that you may have been discriminated against.

**APPENDIX TO SUBPART A OF PART 405—  
CLAIMS THAT WILL BE HANDLED  
UNDER THE PROCEDURES IN THIS  
PART**

(a) We will apply the procedures in this part to disability claims (as defined in § 405.5) filed in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, or Connecticut.

(b) If you move from one State to another after your disability claim has been filed, adjudicators at subsequent levels of review will apply the regulations applicable at the time of such subsequent review in the State where you filed the disability claim.

[73 FR 2415, Jan. 15, 2008]

**Subparts B–C [Reserved]**

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**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 reconsidered determination 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; 76 FR 24808, May 3, 2011]

**§ 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 reconsidered determination on your disability claim 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.

[76 FR 24808, May 3, 2011]

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

(3) The specific reasons you disagree with the previous determination,

(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 reconsidered determination 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 (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; 76 FR 24808, May 3, 2011]

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

(a) *General.* We may set the time and place for the hearing. We may change the time and place, if it is necessary. If we change the time and place of the hearing, we will send you reasonable notice of the change. We 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.

(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. The “place” of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge, whether in person, by video teleconferencing, or by telephone.

(c) *Determining how appearances will be made.* In setting the time and place of the hearing, we will consider the following:

(1) We will consult with the administrative law judge to determine the status of case preparation and to determine whether your appearance, or the appearance of any other party to the hearing, will be made in person or by

video teleconferencing or, under extraordinary circumstances, by telephone. The administrative law judge will determine that your appearance, or the appearance of any other party to the hearing, be conducted by video teleconferencing if video teleconferencing equipment is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge determines that there is no circumstance in the particular case that prevents the use of video teleconferencing to conduct the appearance. The administrative law judge will direct you to appear by telephone when:

(i) An appearance in person is not possible, such as if you are incarcerated, the facility will not allow a hearing to be held at the facility, and video teleconferencing is not available; or

(ii) The administrative law judge determines, either on his or her own, or at your request or at the request of any other party to the hearing, that extraordinary circumstances prevent you or another party to the hearing from appearing at the hearing in person or by video teleconferencing.

(2) The administrative law judge will determine whether any person other than you, including a medical expert or a vocational expert, will appear at the hearing in person, by video teleconferencing, or by telephone. If you object to any other person appearing by video teleconferencing or telephone, the administrative law judge will decide, either in writing or at the hearing, whether to have that person appear in person, by video teleconferencing, or by telephone. The administrative law judge will direct a person, other than you if you object to your appearing by video teleconferencing as provided in paragraph (c)(1) of this section, to appear by video teleconferencing or telephone when the administrative law judge determines:

(i) Video teleconferencing or telephone equipment is available,

(ii) Use of video teleconferencing or telephone equipment would be more efficient than conducting an examination of a witness in person, and

(iii) The administrative law judge determines that there is no other reason why video teleconferencing or telephone should not be used.

(d) *Consultation procedures.* Before we exercise the authority to set the time and place for an administrative law judge's hearings, we will consult with the appropriate hearing office chief administrative law judge to determine if there are any reasons why we should not set the time and place of the administrative law judge's hearings. If the hearing office chief administrative law judge does not state a reason that we believe justifies the limited number of hearings scheduled by the administrative law judge, we will then consult with the administrative law judge before deciding whether to begin to exercise our authority to set the time and place for the administrative law judge's hearings. If the hearing office chief administrative law judge states a reason that we believe justifies the limited number of hearings scheduled by the administrative law judge, we will not exercise our authority to set the time and place for the administrative law judge's hearings. We will work with the hearing office chief administrative law judge to identify those circumstances where we can assist the administrative law judge and address any impediment that may affect the scheduling of hearings.

(e) *Pilot program.* The provisions in the first three sentences of paragraph (a), the first sentence of paragraph (c)(1), and paragraph (d) of this section are a pilot program. These provisions will no longer be effective on August 10, 2015, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the FEDERAL REGISTER.

[71 FR 16446, Mar. 31, 2006, as amended at 78 FR 29627, May 21, 2013; 79 FR 35932, June 25, 2014; 79 FR 44276, July 31, 2014]

**§ 405.316 Notice of a hearing before an administrative law judge.**

(a) *Issuing the notice.* After we set the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice.

We will mail or serve the notice at least 75 days before the date of the hearing, unless you agree to a shorter notice period.

(b) *Notice information.* The notice of hearing will tell you:

- (1) The specific issues to be decided,
- (2) That you may designate a person to represent you during the proceedings,
- (3) How to request that we change the time or place of your hearing,
- (4) That your hearing request may be dismissed if you fail to appear at your scheduled hearing without good reason under § 405.20,
- (5) Whether your appearance or that of any witness is scheduled to be made in person, by video teleconferencing, or by telephone. If we have scheduled you to appear at the hearing by video teleconferencing, the notice of hearing will tell you that the scheduled place for the hearing is a video teleconferencing site and explain what it means to appear at your hearing by video teleconferencing.
- (6) That you must submit all evidence that you wish to have considered at the hearing no later than five business days before the date of the scheduled hearing, unless you show that your circumstances meet the conditions described in § 405.331 for missing the deadline.

(c) *Acknowledging the notice of hearing.* In the notice of hearing, we will ask you to return a form to let us know that you received the notice. If you or your representative do(es) not acknowledge receipt of the notice of hearing, we will attempt to contact you to see if you received it. If you let us know that you did not receive the notice of hearing, we will send you an amended notice by certified mail.

[71 FR 16446, Mar. 31, 2006, as amended at 79 FR 35933, June 25, 2014]

#### § 405.317 Objections.

(a) *Objecting to appearing by video teleconferencing.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by video teleconferencing. If you object to appearing by video teleconferencing, you must notify us in writing within 30 days after the date you receive the notice. If you notify us within that time

period and your residence does not change while your request for hearing is pending, we will set your hearing for a time and place at which you may make your appearance before the administrative law judge in person.

(1) Notwithstanding any objections you may have to appearing by video teleconferencing, if you change your residence while your request for hearing is pending, we may determine how you will appear, including by video teleconferencing, as provided in § 405.315(c). For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence.

(2) If you notify us that you object to appearing by video teleconferencing more than 30 days after the date you receive our notice, we will extend the time period if you show you had good cause for missing the deadline. To determine whether good cause exists for extending the deadline, we use the standards explained in § 405.20.

(b) *Objecting to the time and place of the hearing.* If you object to the time or place of your hearing, you must:

(1) Notify us in writing at the earliest possible opportunity before the date set for the hearing, but not later than 30 days after receiving notice of the hearing. If you notify us that you object to the time or place of hearing more than 30 days after receiving notice of the hearing, we will extend the time period if you show you had good cause for missing the deadline. To determine whether good cause exists for extending the deadline, we use the standards explained in § 405.20; and

(2) State the reason(s) for your objection and state the time and place you want the hearing to be held. The administrative law judge will consider your reason(s) for requesting the change, the facts supporting it, and the impact of the proposed change on the efficient administration of the hearing process. Factors affecting the impact of the change include, but are not limited to, the effect on the processing of other scheduled hearings, delays that might occur in rescheduling your hearing, and whether we previously granted you any changes in the time or place of your hearing. However, an objection to the time or place of your hearing will

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not change the assignment of the administrative law judge for your case, unless we determine reassignment will promote more efficient administration of the hearing process.

(c) *Issues.* If you believe that the issues contained in the hearing notice are incorrect, you should notify the administrative law judge in writing at the earliest possible opportunity, but you must notify him or her no later than 5 business days before the date set for the hearing. You must state the reason(s) for your objection. The administrative law judge will make a decision on your objection either at the hearing or in writing before the hearing.

[79 FR 35933, June 25, 2014]

### § 405.320 Administrative law judge hearing procedures—general.

(a) *General.* A hearing is open only to you and to other persons the administrative law judge considers necessary and proper. The administrative law judge will conduct the proceedings in an orderly and efficient manner. At the hearing, the administrative law judge will look fully into all of the issues raised by your claim, will question you and the other witnesses, and will accept any evidence relating to your claim that you submit in accordance with § 405.331.

(b) *Conduct of the hearing.* The administrative law judge will decide the order in which the evidence will be presented. The administrative law judge may stop the hearing temporarily and continue it at a later date if he or she decides that there is evidence missing from the record that must be obtained before the hearing may continue. At any time before the notice of the decision is sent to you, the administrative law judge may hold a supplemental hearing in order to receive additional evidence, consistent with the procedures described below.

[71 FR 16446, Mar. 31, 2006, as amended at 76 FR 24809, May 3, 2011]

### § 405.325 Issues before an administrative law judge.

(a) *General.* The issues before the administrative law judge include all the issues raised by your claim, regardless

of whether or not the issues may have already been decided in your favor.

(b) *New issues.* Any time after receiving the hearing request and before mailing notice of the hearing decision, the administrative law judge may consider a new issue if he or she, before deciding the issue, provides you an opportunity to address it. The administrative law judge or any party may raise a new issue; an issue may be raised even though it arose after the request for a hearing and even though it has not been considered in an initial or reconsidered determination.

(c) *Collateral estoppel—issues previously decided.* In one of our previous and final determinations or decisions involving you, but arising under a different title of the Act or under the Federal Coal Mine Health and Safety Act, we already may have decided a fact that is an issue before the administrative law judge. If this happens, the administrative law judge will not consider the issue again, but will accept the factual finding made in the previous determination or decision, unless he or she has reason to believe that it was wrong, or reopens the previous determination or decision under subpart G of this part.

### § 405.330 Prehearing conferences.

(a)(1) The administrative law judge, on his or her own initiative or at your request, may decide to conduct a prehearing conference if he or she finds that such a conference would facilitate the hearing or the decision on your claim. A prehearing conference normally will be held by telephone, unless the administrative law judge decides that conducting it in another manner would be more efficient and effective in addressing the issues raised at the conference. We will give you reasonable notice of the time, place, and manner of the conference.

(2) At the conference, the administrative law judge may consider matters such as simplifying or amending the issues, obtaining and submitting evidence, and any other matters that may expedite the hearing.

(b) The administrative law judge will have a record of the prehearing conference made.

(c) We will summarize in writing the actions taken as a result of the conference, unless the administrative law judge makes a statement on the record at the hearing summarizing them.

(d) If neither you nor the person you designate to act as your representative appears at the prehearing conference, and under § 405.380(b), you do not have a good reason for failing to appear, we may dismiss the hearing request.

**§ 405.331 Submitting evidence to an administrative law judge.**

(a) When you submit your request for hearing, you should also submit information or evidence as required by §§ 404.1512 or 416.912 of this chapter or any summary of the evidence to the administrative law judge. You must submit any written evidence no later than 5 business days before the date of the scheduled hearing. If you do not comply with this requirement, the administrative law judge may decline to consider the evidence unless the circumstances described in paragraphs (b) or (c) of this section apply.

(b) If you miss the deadline described in paragraph (a) of this section and you wish to submit evidence during the five business days before the hearing or at the hearing, the administrative law judge will accept the evidence if you show that:

- (1) Our action misled you;
- (2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or
- (3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

(c) If you miss the deadline described in paragraph (a) of this section and you wish to submit evidence after the hearing and before the hearing decision is issued, the administrative law judge will accept the evidence if you show that there is a reasonable possibility that the evidence, alone or when considered with the other evidence of record, would affect the outcome of your claim, and:

- (1) Our action misled you;
- (2) You had a physical, mental, educational, or linguistic limitation(s)

that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

[71 FR 16446, Mar. 31, 2006, as amended at 80 FR 14837, Mar. 20, 2015]

**§ 405.332 Subpoenas.**

(a) When it is reasonably necessary for the full presentation of a claim, an administrative law judge may, on his or her own initiative or at your request, issue subpoenas for the appearance and testimony of witnesses and for the production of any documents that are relevant to an issue at the hearing.

(b) To have documents or witnesses subpoenaed, you must file a written request for a subpoena with the administrative law judge at least 10 days before the hearing date. The written request must:

- (1) Give the names of the witnesses or documents to be produced;
- (2) Describe the address or location of the witnesses or documents with sufficient detail to find them;
- (3) State the important facts that the witness or document is expected to show; and
- (4) Indicate why these facts could not be shown without that witness or document.

(c) We will pay the cost of issuing the subpoena and pay subpoenaed witnesses the same fees and mileage they would receive if they had been subpoenaed by a Federal district court.

(d) Within five days of receipt of a subpoena, but no later than the date of the hearing, the person against whom the subpoena is directed may ask the administrative law judge to withdraw or limit the scope of the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope.

(e) Upon failure of any person to comply with a subpoena, the Office of the General Counsel may seek enforcement of the subpoena under section 205(e) of the Act.

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### § 405.333 Submitting documents.

All documents prepared and submitted by you, *i.e.*, not including medical or other evidence that is prepared by persons other than the claimant or his or her representative, should clearly designate the name of the claimant and the last four digits of the claimant's social security number. All such documents must be clear and legible to the fullest extent practicable and delivered or mailed to the administrative law judge within the time frames that he or she prescribes. Documents that are typewritten or produced with word processing software must use type face no smaller than 12 point font.

### § 405.334 Prehearing statements.

(a) At any time before the hearing begins, you may submit, or the administrative law judge may request that you submit, a prehearing statement as to why you are disabled.

(b) Unless otherwise requested by the administrative law judge, a prehearing statement should discuss briefly the following matters:

- (1) Issues involved in the proceeding,
- (2) Facts,
- (3) Witnesses,

(4) The evidentiary and legal basis upon which your disability claim can be approved, and

(5) Any other comments, suggestions, or information that might assist the administrative law judge in preparing for the hearing.

### § 405.340 Deciding a claim without a hearing before an administrative law judge.

(a) *Decision fully favorable.* If the evidence in the record supports a decision fully in your favor, the administrative law judge may issue a decision without holding a hearing. However, the notice of the decision will inform you that you have the right to a hearing and that you have a right to examine the evidence on which the decision is based.

(b) *You do not wish to appear.* The administrative law judge may decide a claim on the record and not conduct a hearing if—

- (1) You state in writing that you do not wish to appear at a hearing, or

(2) You live outside the United States and you do not inform us that you want to appear.

(c) When a hearing is not held, the administrative law judge will make a record of the evidence, which, except for the transcript of the hearing, will contain the material described in § 405.360. The decision of the administrative law judge must be based on this record.

[71 FR 16446, Mar. 31, 2006, as amended at 75 FR 33168, June 11, 2010]

### § 405.342 Prehearing proceedings and decisions by attorney advisors.

After a hearing is requested but before it is held, an attorney advisor may conduct prehearing proceedings as set out in § 404.942(c) or § 416.1442(c) of this chapter. If, after the completion of these proceedings, we can make a decision that is fully favorable to you and all other parties based on the preponderance of the evidence, an attorney advisor, instead of an administrative law judge, may issue the decision. We use the procedures § 404.942 or § 416.1442 of this chapter when we conduct prehearing proceedings or issue decisions under this section.

[76 FR 24809, May 3, 2011]

### § 405.350 Presenting evidence at a hearing before an administrative law judge.

(a) *The right to appear and present evidence.* You have a right to appear before the administrative law judge, either in person or, when the administrative law judge determines that the conditions in § 405.315(c) exist, by video teleconferencing or telephone, to present evidence and to state your position. You also may appear by means of a designated representative.

(b) *Admissible evidence.* The administrative law judge may receive any evidence at the hearing that he or she believes relates to your claim.

(c) *Witnesses at a hearing.* Witnesses who appear at a hearing shall testify under oath or by affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or making an affirmation. The administrative law judge, you, or your representative may ask

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the witnesses any questions relating to your claim.

[71 FR 16446, Mar. 31, 2006, as amended at 79 FR 35933, June 25, 2014]

### § 405.351 Closing statements.

You or your representative may present a closing statement to the administrative law judge—

- (a) Orally at the end of the hearing,
- (b) In writing after the hearing and within a reasonable time period set by the administrative law judge, or
- (c) By using both methods under paragraphs (a) and (b).

### § 405.360 Official record.

All hearings will be recorded. All evidence upon which the administrative law judge relies for the decision must be contained in the record, either directly or by appropriate reference. The official record will include the applications, written statements, certificates, reports, affidavits, medical records, and other documents that were used in making the decision under review and any additional evidence or written statements that the administrative law judge admits into the record under §§ 405.320(a) and 405.331. All exhibits introduced as evidence must be marked for identification and incorporated into the record. The official record of your claim will contain all of the marked exhibits and a verbatim recording of all testimony offered at the hearing; it also will include any prior initial determinations or decisions on your claim. Subject to § 405.401(c), the official record closes once the administrative law judge issues his or her decision regardless of whether it becomes our final decision.

[71 FR 16446, Mar. 31, 2006, as amended at 76 FR 24809, May 3, 2011]

### § 405.365 Consolidated hearing before an administrative law judge.

(a) *General.* (1) We may hold a consolidated hearing if—

- (i) You have requested a hearing to decide your disability claim, and
- (ii) One or more of the issues to be considered at your hearing is the same as an issue involved in another claim you have pending before us.

(2) If the administrative law judge consolidates the claims, he or she will decide both claims, even if we have not yet made an initial determination or a reconsidered determination on the other claim.

(b) *Record, evidence, and decision.* There will be a single record at a consolidated hearing. This means that the evidence introduced at the hearing becomes the evidence of record in each claim adjudicated. The administrative law judge may issue either a consolidated decision or separate decisions for each claim.

[71 FR 16446, Mar. 31, 2006, as amended at 76 FR 24809, May 3, 2011]

### § 405.366 Posthearing conferences.

(a) The administrative law judge may decide, on his or her own initiative or at your request, to hold a posthearing conference to facilitate the hearing decision. A posthearing conference normally will be held by telephone unless the administrative law judge decides that conducting it in another manner would be more efficient and effective in addressing the issues raised. We will give you reasonable notice of the time, place, and manner of the conference. A record of the conference will be made and placed in the hearing record.

(b) If neither you nor the person you designate to act as your representative appears at the posthearing conference, and under § 405.380(b), you do not have a good reason for failing to appear, we will issue a decision based on the information available in your claim.

### § 405.370 Decision by the administrative law judge.

(a) The administrative law judge will make a decision based on all of the evidence, including the testimony introduced at the hearing. The administrative law judge will prepare a written decision that explains in clear and understandable language the specific reasons for the decision.

(b) During the hearing, in certain categories of claims that we identify in advance, the administrative law judge may orally explain in clear and understandable language the specific reasons for, and enter into the record, a fully favorable decision. The administrative law judge will include in the record a

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document that sets forth the key data, findings of fact, and narrative rationale for the decision. Within five days after the hearing, if there are no subsequent changes to the analysis in the oral decision, we will send you a written decision that incorporates such oral decision by reference. If there is a change in the administrative law judge's analysis or decision, we will send you a written decision that is consistent with paragraph (a) of this section. Upon written request, we will provide you a record of the oral decision.

[71 FR 16446, Mar. 31, 2006, as amended at 75 FR 33168, June 11, 2010; 76 FR 24809, May 3, 2011]

### § 405.371 Notice of the decision of an administrative law judge.

We will send a notice and the administrative law judge's decision to you at your last known address. The notice accompanying the decision will explain your right to representation. It also will explain your right to request review of the decision by the Appeals Council.

[71 FR 16446, Mar. 31, 2006, as amended at 76 FR 24809, May 3, 2011]

### § 405.372 Effect of an administrative law judge's decision.

The decision of the administrative law judge is binding on all parties to the hearing unless—

(a) You or another party requests a review of the decision by the Appeals Council within the stated time period, and the Appeals Council reviews your case;

(b) You or another party requests a review of the decision by the Appeals Council within the stated time period, the Appeals Council denies your request for review, you seek judicial review of your case by filing an action in a Federal district court, and the Federal court reverses the decision or remands it for further administrative action;

(c) An administrative law judge or the Appeals Council revises the decision under § 405.601 of this part;

(d) You use the expedited appeals process described in §§ 404.923 through 404.928 or §§ 416.1423 through 416.1428 of this chapter;

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(e) The ALJ decided the case after a Federal court remanded your case to us, and the Appeals Council follows the procedures in § 404.984 or § 416.1484 of this chapter to assume jurisdiction of your case; or

(f) The Appeals Council reviews the claim on its own motion.

[76 FR 24809, May 3, 2011]

### § 405.373 [Reserved]

### § 405.380 Dismissal of a request for a hearing before an administrative law judge.

An administrative law judge may dismiss a request for a hearing:

(a) At any time before notice of the hearing decision is mailed, when you withdraw the request orally on the record at the hearing or in writing;

(b)(1) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we previously notified you that your request for hearing may be dismissed if you did not appear, and you do not give a good reason for failing to appear; or

(2) If neither you nor the person you designate to act as your representative appears at the hearing or at the prehearing conference, we had not previously notified you that your request for hearing may be dismissed if you did not appear, and within 10 days after we send you a notice asking why you did not appear, you do not give a good reason for failing to appear.

(3) In determining whether you had a good reason under this paragraph, we will consider the factors described in § 405.20(a) of this part;

(c) If the doctrine of *res judicata* applies because we have made a previous determination or decision on your disability claim on the same facts and on the same issue or issues, and this previous determination or decision has become final;

(d) If you have no right to a hearing under § 405.305;

(e) If you did not request a hearing in time and we have not extended the time for requesting a hearing; or

(f) If you die and your estate or any person to whom an underpayment may be distributed under §§ 404.503 or 416.542

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of this chapter has not pursued your claim.

### **§ 405.381 Notice of dismissal of a request for a hearing before an administrative law judge.**

We will mail a written notice of the dismissal of the hearing request to you at your last known address. The notice will tell you that you may ask the Appeals Council to review the dismissal and will explain your right to representation. Your request for review by the Appeals Council must be in writing and must be filed within 60 days after the date that you receive notice of the dismissal.

[71 FR 16446, Mar. 31, 2006, as amended at 76 FR 24809, May 3, 2011]

### **§ 405.382 [Reserved]**

### **§ 405.383 Effect of dismissal of a request for a hearing before an administrative law judge.**

The administrative law judge's dismissal of a request for a hearing is binding and not subject to further review, unless an administrative law judge or the Appeals Council vacates it.

[76 FR 24809, May 3, 2011]

## **Subpart E—Appeals Council Review**

### **§ 405.401 Appeals Council review.**

(a) If you (or any other party) are dissatisfied with the hearing decision or with the dismissal of a hearing request under this part, you may request that the Appeals Council review that action. The Appeals Council may also initiate review on its own motion. Except as specifically provided in this subpart, we will follow our rules for Appeals Council review in §§ 404.966 through 404.984 and 416.1466 through 416.1484 of this chapter.

(b) If you seek Appeals Council review, you must file your request within the time period and in accordance with the procedures in §§ 404.968 and 416.1468 of this chapter. The Appeals Council will consider additional evidence only in accordance with paragraph (c) of this section.

(c) If you submit additional evidence, the Appeals Council will consider the additional evidence only where it relates to the period on or before the date of the hearing decision, and only if you show that there is a reasonable probability that the evidence, alone or when considered with the other evidence of record, would change the outcome of the decision, and

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

[76 FR 24809, May 3, 2011]

### **§ 405.405 [Reserved]**

### **§ 405.410 [Reserved]**

### **§ 405.415 [Reserved]**

### **§ 405.420 [Reserved]**

### **§ 405.425 [Reserved]**

### **§ 405.427 [Reserved]**

### **§ 405.430 Record before the Appeals Council.**

Subject to § 405.401(c), the record is closed as of the date of the administrative law judge's decision, and the Appeals Council will base its action on the same evidence that was before the administrative law judge.

[76 FR 24810, May 3, 2011]

### **§ 405.440 [Reserved]**

### **§ 405.445 [Reserved]**

### **§ 405.450 [Reserved]**

## **Subpart F—Judicial Review**

### **§ 405.501 Judicial review.**

You may file an action in a Federal district court within 60 days of the date our decision becomes final and judicially reviewable.

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### § 405.505 Extension of time to file a civil action.

If you have received our final decision, you may request that we extend the time for seeking judicial review in a Federal district court. Your request must be in writing and explain why the action was not filed, or cannot be filed, on time. You must file your request with the Appeals Council. If you show that you have good cause for missing the deadline, we will extend the time period. We will use the standards in § 405.20 of this part to determine if you have good cause for an extension of time.

[71 FR 16446, Mar. 31, 2006, as amended at 76 FR 24810, May 3, 2011]

### § 405.510 Claims remanded by a Federal court.

When a Federal court remands a claim decided under this part for further agency consideration, the Appeals Council may make a decision based upon the evidence in the record, or it may remand the claim to an administrative law judge. If the Appeals Council remands a claim to an administrative law judge, the Appeals Council will send you a notice of remand.

[76 FR 24810, May 3, 2011]

### § 405.515 Application of circuit court law.

We will follow the procedures in §§ 404.985 and 416.1485 of this chapter for claims decided under this part.

## Subpart G—Reopening and Revising Determinations and Decisions

### § 405.601 Reopening and revising determinations and decisions.

(a) Subject to paragraph (b), the reopening procedures of §§ 404.987 through 404.996 of this chapter apply to title II claims and the procedures of §§ 416.1487 through 416.1494 of this chapter apply to title XVI claims.

(b) When we have issued a final decision after a hearing on a claim that you seek to have reopened, for purposes of this part, the time frames for good cause under §§ 404.988(b) and 416.1488(b) of this chapter are six months from the date of the final decision and we will

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not find that “new and material evidence” under §§ 404.989(a)(1) and 416.1489(a)(1) of this chapter is a basis for good cause.

[71 FR 16446, Mar. 31, 2006; 71 FR 17990, Apr. 10, 2006]

## Subparts H–I [Reserved]

## Subpart J—Payment of Certain Travel Expenses

### § 405.901 Reimbursement of certain travel expenses.

When you file a disability claim, you may incur certain travel expenses that may be reimbursable. We use §§ 404.999a through 404.999d of this chapter for title II claims and §§ 416.1495 through 416.1499 of this chapter for title XVI claims in determining reimbursable expenses and for explaining how and where you may request reimbursement.

## PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

### Subpart A—Introduction, General Provision and Definitions

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### Subpart B—SVB Qualification and Entitlement

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408.212 What happens if you are a qualified individual already residing outside the United States?

AGE

408.214 Are you age 65?