



SOCIAL SECURITY ADMINISTRATION

[Docket No. 2011-0056]

20 CFR Parts 404, 405, and 416

RIN 0960-AH37

Changes to Scheduling and Appearing at Hearings

AGENCY: Social Security Administration

ACTION: Notice of Proposed Rulemaking.

SUMMARY: We propose to revise our rules to protect the integrity of our programs and preserve limited resources. Prior to scheduling a hearing, we will notify the claimant that his or her hearing may be held by video teleconferencing. The claimant will have an opportunity to object to appearing by video teleconferencing within 30 days after the date he or she receives the notice. We also propose changes that allow us to determine that a claimant will appear via video teleconferencing if he or she changes residences while his or her request for hearing is pending, regardless of whether or not the claimant previously declined a hearing by video teleconferencing.

Additionally, we propose changes that require a claimant to notify us, in writing, of an objection to the time and place of hearing at the earliest opportunity, but not later than 5 days before the date set for the hearing, or, if earlier, 30 days after receiving the notice of the hearing. We also propose to revise our rules so that an administrative law judge (ALJ) can direct a claimant and any other party to a hearing to appear by telephone in extraordinary circumstances.

We anticipate that these proposed changes will have a minimal impact on the public, and will help ensure the integrity of our programs and allow us to administer our programs more efficiently.

DATES: To ensure that your comments are considered, we must receive them no later than (INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER).

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA-2011-0056 so that we may associate your comments with the correct rule.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA-2011-0056. The system will issue a tracking number to confirm your submission. You will not be able to view your comment

immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Brian J. Rudick, Office of Regulations and Reports Clearance, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-7102. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

As part of our ongoing commitment to improve the way we process claims for benefits under the old-age, survivors, and disability insurance programs under title II of the Social Security Act (Act) and the supplemental security income (SSI) program under title XVI of the Act, we are proposing revisions to some of the procedures we follow at the ALJ hearing level. Our workloads at the ALJ hearing level have continued to grow, and we expect the number of requests for hearing will remain high over the next several years. Along with our continued developments and improvements in our electronic service delivery process, we anticipate that the proposed changes will help us provide better service by allowing us to conduct hearings and issue decisions more expeditiously.

Objecting to appearing by video teleconferencing

Nearly a decade ago, we adopted rules that allow us to hold hearings by video teleconferencing, and we have continued to expand the use of video teleconferencing technology for hearings since that time. The addition of video teleconferencing capabilities has allowed us to open five National Hearing Centers (NHC). The NHCs allow us to manage our workloads more effectively and help us to reduce the hearing office backlog. NHCs are uniquely positioned to assist hearing offices with electronic cases that are scheduled for a hearing by video teleconferencing. ALJs in traditional hearing offices also hold hearings by video teleconferencing. In these cases, a claimant may attend the hearing by video teleconferencing at a hearing office closer to his or her residence, or, in some cases, at his or her local field office. Hearings held by video teleconferencing help reduce our average processing time, reduce travel expenses, and allow us to better serve the public.

At the same time that we have increased our video teleconference capacity, our commitment to transparency has made significantly more detailed information about our ALJs available to claimants and their representatives. We make available on our Internet site information about the performance of each of our ALJs, including information about the number of decisions each ALJ has made, and the breakdown of those decisions by outcome. Our increased use of the NHCs, the expansion of our video conferencing capacity, and the public availability of detailed information about the performance of each of our ALJs, including each ALJ's allowance rate, have had unintended consequences that can undermine the efficiency and integrity of our hearings process, as described below.

Under our current business processes, we notify claimants whether they will appear by video teleconferencing at the same time that we schedule the hearing. Our current regulations also provide that a claimant, or a representative on a claimant's behalf, may object to appearing by video teleconferencing at the earliest possible opportunity before the time set for the hearing. If the claimant files such an objection, the ALJ assigned to the case will find the objection is good cause to reschedule the hearing, so that the claimant can appear in person. In addition, a claimant may notify us at any time prior to appearing in person or via video teleconferencing at the hearing that he or she has a new residence, which could result in the case being transferred to, and rescheduled in, a new hearing office or region.

Because our regulations do not contain a specific time limit for objecting to appearing by video teleconferencing, we have experienced an increase in declinations to participate in hearings by video teleconferencing.¹ Similarly, a change in residence could result in a re-assignment to a different ALJ. We have become concerned that some claimants or their representatives may be using the ability to decline to appear by video teleconferencing or to request a case transfer due to a change in residence to undermine the random assignment of cases to our ALJs.

When claimants decline a hearing scheduled by video teleconferencing or request to reschedule an in-person hearing, the decision has a ripple effect throughout the hearing process. We must use limited administrative resources to reschedule a hearing at a time and place amenable to all hearing participants. Rescheduling hearings has an adverse effect on other claimants, some of whom must wait longer for a hearing while we accommodate the rescheduled hearing.

To better utilize our limited resources and make our hearing process more efficient for all claimants, we propose to modify our rules so that we would notify a claimant earlier in the process, before an ALJ is assigned or a hearing is scheduled, that he or she has the right to object to appearing at the hearing by video teleconferencing. If the claimant does not want to appear at the hearing in this manner, the claimant must object in writing within 30 days after the date he or she receives this notice. If we receive

¹ We took steps to address this issue beginning in December 2011 by changing the prehearing notices that we sent to claimants and their representatives. Those prehearing notices no longer included the name of the ALJ assigned to the case. We ended the policy we adopted in December 2011 effective April 20, 2013. Currently, we disclose the name of the ALJ assigned to a hearing when we send out a Notice of Hearing.

a timely objection, we will schedule the claimant for an in person hearing, with one limited exception.

The limited exception to this rule would apply when the claimant moves to a different residence while his or her request for a hearing is pending. If a claimant moves from one residence to another while his or her request for hearing is pending, we will determine whether a claimant will appear in person or by video teleconferencing, even if the claimant previously objected to appearing by video teleconferencing. In addition, the proposed rules explain that in order for us to consider a change in residence when scheduling a hearing, the claimant must submit evidence verifying a new residence. After we receive evidence regarding the claimant's new residence, we will decide how the claimant's appearance will be made. This limited exception to the rule would allow us to protect the integrity of our programs while providing us with the flexibility to transfer cases when there is a legitimate change in residence and such a transfer would allow us to process the case more efficiently.

Although a claimant retains the right to object to the time and place of the hearing once it is scheduled, as described below, we will not consider an objection based solely on appearing at the hearing by video teleconferencing if the claimant did not object within the required time period.

Time period for objecting to a hearing

We also propose specifying the time period for objecting to the time and place of a hearing. To ensure that we have adequate time to prepare for the hearing, we propose to revise these rules to require that a claimant notify us of an objection in writing at the earliest possible opportunity, but not later than 5 days before the date set for the hearing or, if earlier, 30 days after receiving notice of the hearing.

If the claimant objects to the time and place of the hearing outside of the specified time period and fails to attend the hearing, the administrative law judge will follow existing sub-regulatory authority to develop good cause for failure to appear. For example, our current procedures require that when the claimant fails to appear at the hearing because of severe weather or a death in the family, the ALJ will find good cause for failure to appear and reschedule the hearing.

We also made other minor revisions to the proposed rules to clarify when we will reschedule a hearing for good cause. For instance, we removed the example that a claimant might offer living closer to another hearing site as a good cause reason to object to the time and place of the hearing. Additionally, in the proposed rules where we address rescheduling a hearing, we added editorial changes for internal consistency.

Appearing at the hearing by telephone

To further reduce the need to reschedule hearings and improve efficiency, we also propose to provide that the ALJ may determine that the claimant who requested the

hearing, or any other party to the hearing, will appear at the hearing by telephone under extraordinary circumstances. For example, an ALJ will direct a claimant or other party to the hearing to appear by telephone when the person's appearance in person is not possible, such as when the person is incarcerated, and the correctional facility will not allow a hearing to be held at the facility, and video teleconferencing is not available. The flexibility in the proposed rule will also allow us to continue the practice of scheduling a hearing by telephone when the claimant specifically requests a hearing in this manner, and the ALJ determines that extraordinary circumstances prevent the claimant or other party who makes the request from appearing at the hearing in person or by video teleconferencing.

We anticipate that this proposed rule will benefit both us and the public. We spend significant administrative resources trying to arrange an in person hearing with the officials of the correctional facility. We also lose significant productivity if an ALJ is required to travel to a confinement facility to hold one or two hearings, because the travel to the facility prevents the ALJ from scheduling a full hearing docket for that day. Permitting us to schedule telephone appearances when extraordinary circumstances such as these exist would allow us to save limited administrative resources and allow us to provide more timely hearings to all claimants because the ALJ would be present in the hearing office to conduct a full hearing docket.

Part 405

We are proposing several changes to Part 405 for consistency with these proposed rules. We propose changes relating to video teleconferencing and hearing appearances by telephone in extraordinary circumstances, as described above.

Additionally, we are proposing other minor changes for consistency with other rules in Parts 404 and 416. Most significantly, for consistency with our pilot program in place in all regions except Boston, we are proposing changes in setting the time and place for hearing. Currently in the Boston region, the ALJ sets the time and place of hearing. In every other region the regulations state that we have the authority to set the time and place of hearing. We propose expanding that authority to Part 405.

Clarity of These Rules

Executive Order 12866 as supplemented by Executive Order 13563 requires each agency to write all rules in plain language. In addition to your substantive comments on this NPRM, we invite your comments on how to make rules easier to understand. For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?

- Would a different format make the rule easier to understand, e.g. grouping and order of sections, use of headings, paragraphing?

When Will We Start To Use These Rules?

We will not use these rules until we evaluate public comments and publish final rules in the Federal Register. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish final rules, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rules.

REGULATORY PROCEDURES

Executive Order 12866 as supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563 and are subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These proposed rules contain reporting public reporting requirements in the regulation sections listed below. We are seeking approval for these regulation sections and for new a new SSA form, which we will use to collect the information required by these sections. Below we provide burden estimates for the public reporting requirements.

Regulation Section	Description of Public Reporting Requirement	Number of Respondents (annually)	Frequency of Response	Average Burden Per Response (minutes)	Estimated Annual Burden*
404.936(c); 405.317(a); 416.1436(c)	If you object to video teleconferencing you must notify us in writing no later than 30 days after we send the acknowledgement letter.	850,000	1	5	70,833
404.936(e); 416.1436(e)	You must notify us if you wish to object to the time and place in writing no later than 5 days prior to hearing or 30 days after receiving notice of hearing	900,000	1	30	450,000
404.938(a); 405.316(a); 416.1438(a)	Indication in writing that respondent does not wish to receive notice of hearing	1,600	1	5	133
Total					

		1,751,600			520,966
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We submitted an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget
 Attn: Desk Officer for SSA
 Fax Number: 202-395-6974
 E-mail address: OIRA_Submission@omb.eop.gov

Social Security Administration
 Attn: Reports Clearance Officer
 1333 Annex
 6401 Security Blvd
 Baltimore, MD 21235-0001
 Fax Number: 410-965-6400
 E-mail: OR_Reports_Clearance@ssa.gov

You can submit comments until (INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER), which is 60 days after the publication of this notice. However, your comments will be most useful if you send them to SSA by (INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER), which is 30 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security – Disability Insurance; 96.002, Social Security – Retirement Insurance; 96.004, Social Security – Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 405

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Public assistance programs; Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI).

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public Assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: June 18, 2013

Carolyn W. Colvin,
Acting Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR chapter III parts 404, 405, and part 416 as set forth below:

Part 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE
(1950-)

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Revise §404.929 to read as follows:

§404.929 Hearing before an administrative law judge-general.

If you are dissatisfied with one of the determinations or decisions listed in § 404.930 you may request a hearing. The Deputy Commissioner for Disability Adjudication and Review, or his or her delegate, will appoint an administrative law judge

to conduct the hearing. If circumstances warrant, the Deputy Commissioner, or his or her delegate, may assign your case to another administrative law judge. At the hearing, you may appear in person, by video teleconferencing, or, under certain extraordinary circumstances, by telephone. You may submit new evidence, examine the evidence used in making the determination or decision under review, and present and question witnesses. The administrative law judge who conducts the hearing may ask you questions. He or she will issue a decision based on the preponderance of the evidence in the hearing record. If you waive your right to appear at the hearing, in person, by video teleconferencing, or by telephone, the administrative law judge will make a decision based on the preponderance of the evidence that is in the file and any new evidence that may have been submitted for consideration.

3. In §404.936, revise paragraphs (b) and (c), redesignate paragraphs (d)-(e) as paragraphs (e)-(f), add a new paragraph (d) and revise redesignated paragraphs (e)-(f), to read as follows:

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

* * * * *

(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, 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 or another party to the hearing to appear by telephone when:

(i) An appearance in person is not possible, such as if you are incarcerated and 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 own, or at your request or 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) [Reserved]

(d) 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. However, 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 paragraph (c)(1) of this section. For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence.

(e) Objecting to the time or place of the hearing. If you object to the time or place of your hearing, you must notify us in writing at the earliest possible opportunity, but not later than 5 days before the date set for the hearing or, if earlier, 30 days after receiving notice of the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held. We will change the time or place of the hearing if the administrative law judge finds you have good cause, as determined under paragraph (f) of this section. Section 404.938 provides procedures we will follow when you do not respond to a notice of hearing.

(f) Good cause for changing the time or place. The administrative law judge will determine whether good cause exists for changing the time or place of your scheduled hearing. However, a finding that good cause exists to reschedule the time or place of your hearing will 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.

(1) We will reschedule your hearing, if your reason is one of the following circumstances and is supported by the evidence:

(i) A serious physical or mental condition or incapacitating injury makes it impossible for you or your representative to travel to the hearing, or a death in the family occurs; or

(ii) Severe weather conditions make it impossible for you or your representative to travel to the hearing.

(2) In determining whether good cause exists in circumstances other than those set out in subparagraph (1) of this section, the administrative law judge will consider your reason 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 which might occur in rescheduling your hearing, and whether we granted you any prior changes. Examples of such other circumstances that you might

give for requesting a change in the time or place of the hearing include, but are not limited to, the following:

(i) You unsuccessfully attempted to obtain a representative and need additional time to secure representation;

(ii) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(iii) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(iv) A witness who will testify to facts material to your case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;

(v) Transportation is not readily available for you to travel to the hearing; or

(vi) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

* * * * *

4. In §404.938, revise paragraph (b) to read as follows:

§ 404.938 Notice of a hearing before an administrative law judge.

* * * * *

(b) Notice information. The notice of hearing will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of your hearing, a reminder that if you fail to appear at your scheduled hearing without good cause the administrative law judge may dismiss your hearing request, and other information about the scheduling and conduct of your hearing. You will also be told if your appearance or that of any other party or 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.

* * * * *

Part 405 – ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL
DISABILITY CLAIMS

5. The authority citation for part 405 continues to read as follows:

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).

6. In § 405.315, revise paragraphs (a)-(c), and add new paragraphs (d)-(e), to read as follows:

§ 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 conferencing, 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 will be made in person or by video teleconferencing or, under extraordinary circumstances, by telephone. The administrative law judge will determine that your appearance 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 and 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 own, or at your request or 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) Reserved

(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 9, 2016, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the Federal Register.

7. In 405.316, revise paragraphs (a) and (b)(5), to read as follows:

(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) * * * * *

(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.

* * * * *

8. Revise § 405.317 to read as follows:

§ 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. However, 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 section 405.315 of this part. For us to consider a change of residence when we schedule your hearing, you must submit evidence verifying your new residence.

(b) Objecting to the time and place of the hearing. (1) If you object to the time or place of your hearing, you must notify us in writing at the earliest possible opportunity before the date set for the hearing, but no later than 30 days after receiving notice of the hearing. You must state the reason(s) for your objection and state the time and place you want the hearing to be held.

(2) The administrative law judge will consider your reason(s) for requesting the change 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 which might occur in rescheduling your hearing, and whether we previously granted to you any changes in the time or place of your hearing. However, an objection to the time or place of your hearing will 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 must notify him or her no later than five 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.

9. In § 405.350, revise the first sentence of paragraph (a) to read as follows:

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

(a) * * * 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. * * *

* * * * *

Part 416 – SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N - Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

10. The authority citation for subpart N of part 416 continues to read as follows

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108-203, 118 Stat. 509 (42 U.S.C. 902 note).

11. Revise §416.1429 to read as follows:

§416.1429 Hearing before an administrative law judge-general.

If you are dissatisfied with one of the determinations or decisions listed in §416.1430 you may request a hearing. The Deputy Commissioner for Disability Adjudication and Review, or his or her delegate, will appoint an administrative law judge to conduct the hearing. If circumstances warrant, the Deputy Commissioner, or his or her delegate, may assign your case to another administrative law judge. At the hearing, you may appear in person, by video teleconferencing, or, under certain extraordinary circumstances, by telephone. You may submit new evidence, examine the evidence used in making the determination or decision under review, and present and question witnesses. The administrative law judge who conducts the hearing may ask you questions. He or she will issue a decision based on the preponderance of the evidence in the hearing record. If you waive your right to appear at the hearing, in person, by video teleconferencing, or by telephone, the administrative law judge will make a decision based on the preponderance of the evidence that is in the file and any new evidence that may have been submitted for consideration.

12. In §416.1436, revise paragraphs (b) and (c), redesignate paragraphs (d)-(e) as paragraphs (e)-(f), add a new paragraph, (d) and revise redesignated paragraphs (e)-(f), to read as follows:

§416.1436 Time and place for a hearing before an administrative law judge.

* * * * *

(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 conferencing, 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, by video conferencing, 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 conferencing if video conferencing equipment is available to conduct the appearance, use of video conferencing to conduct the appearance would be more

efficient than conducting the appearance in person, and the administrative law judge determines 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 or another party to the hearing to appear by telephone when:

(i) An appearance in person is not possible, such as if you are incarcerated and 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 own, or at your request or 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) Reserved

(d) 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. However, 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 paragraph (c)(1) of this

section. For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence.

(e) Objecting to the time or place of the hearing. If you object to the time or place of your hearing, you must notify us in writing at the earliest possible opportunity, but not later than 5 days before the date set for the hearing or, if earlier, 30 days after receiving notice of the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held. We will change the time or place of the hearing if the administrative law judge finds you have good cause, as determined under paragraph (f) of this section. Section 416.1438 provides procedures we will follow when you do not respond to a notice of hearing.

(f) Good cause for changing the time or place. The administrative law judge will determine whether good cause exists for changing the time or place of your scheduled hearing. However, a finding that good cause exists to reschedule the time or place of your hearing will 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.

(1) We will reschedule your hearing, if your reason is one of the following circumstances and is supported by the evidence:

(i) A serious physical or mental condition or incapacitating injury makes it impossible for you or your representative to travel to the hearing, or a death in the family occurs; or

(ii) Severe weather conditions make it impossible for you and your representative to travel to the hearing.

(2) In determining whether good cause exists in circumstances other than those set out in subparagraph (1) of this section, the administrative law judge will consider your reason 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 which might occur in rescheduling your hearing, and whether we granted you any prior changes. Examples of such other circumstances that you might give for requesting a change in the time or place of the hearing include, but are not limited to, the following:

(i) You unsuccessfully attempted to obtain a representative and need additional time to secure representation;

(ii) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(iii) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;

(iv) A witness who will testify to facts material to your case would be unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained;

(v) Transportation is not readily available for you to travel to the hearing; or

(vi) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

* * * * *

13. In §416.1438, revise paragraph (b) to read as follows:

§ 416.1438 Notice of a hearing before an administrative law judge.

* * * * *

(b) Notice information. The notice of hearing will contain a statement of the specific issues to be decided and tell you that you may designate a person to represent you during the proceedings. The notice will also contain an explanation of the procedures for requesting a change in the time or place of your hearing, a reminder that if you fail to appear at your scheduled hearing without good cause the administrative law judge may dismiss your hearing request, and other information about the scheduling and conduct of your hearing. You will also be told if your appearance or that of any other party or 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.

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