



4191-02U

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 402, 404, 408, 411, 416, and 422

[Docket No. SSA-2017-0073]

RIN 0960-AI25

Hearings Held by Administrative Appeals Judges of the Appeals Council

AGENCY: Social Security Administration.

ACTION: Notice of proposed rule making.

SUMMARY: We propose to revise our rules to clarify when and how administrative appeals judges (AAJ) on our Appeals Council may hold hearings and issue decisions.

The Appeals Council already has the authority to hold hearings and issue decisions under our existing statute and regulations, but we have not exercised this authority or explained the circumstances under which it would be appropriate for the Appeals Council to assume responsibility for holding a hearing and issuing a decision. The proposed clarifications will ensure the Appeals Council is not limited in the type of claims for which it may hold hearings. We expect that these proposed rules will increase our adjudicative capacity when needed, allowing us to adjust more quickly to fluctuating short-term workloads, such as when an influx of cases reaches the hearings level. Our ability to utilize our limited resources more effectively will help us quickly optimize our hearings capacity, which in turn will allow us to continue to issue accurate, timely, high-quality decisions.

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].

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-2017-0073 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-2017-0073. 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 comments 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, 3100 West High Rise 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 in FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Nancy Chung, Office of Appellate Operations, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 605-7100. 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 of November 2019, pending applicants have waited from a low of about 8.5 months to a high of about 20 months for a hearing.<sup>1</sup> At the end of November 2019, we had approximately 541,000 applicants for benefits who are waiting for a hearing before

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<sup>1</sup> See Average Wait Time Until Hearing Held Report (By Month), available at: [https://www.ssa.gov/appeals/DataSets/archive/archive\\_data\\_reports.html](https://www.ssa.gov/appeals/DataSets/archive/archive_data_reports.html), where further data may be extrapolated. You may also extrapolate current average processing time for a hearing decision here: [https://www.ssa.gov/appeals/DataSets/02\\_HO\\_Workload\\_Data.html](https://www.ssa.gov/appeals/DataSets/02_HO_Workload_Data.html).

an administrative law judge (ALJ).<sup>2</sup> The vast majority of these claimants are seeking disability benefits under title II of the Social Security Act (Act) or Supplemental Security Income (SSI) payments based on disability under title XVI of the Act.<sup>3</sup>

The proposed changes in these rules will increase our adjudicative capacity, when needed, allowing us to adjust to fluctuating short-term workloads, such as when an influx of cases reaches the hearings level. This will also provide us with appropriate flexibility, particularly when budgets may not support additional hiring or unanticipated shifts in disability application rates occur. Utilizing resources we already have will help us quickly optimize our hearings capacity to issue decisions in a timely manner and avoid the likelihood of growing hearings backlogs in the future.

At the end of fiscal year (FY) 2010, we had approximately 705,000 cases pending at the hearing level of our administrative review process.<sup>4</sup> By the end of FY 2016, that number had grown to more than 1.1 million cases, peaking in FY 2017 at 38 percent above the number of hearing requests pending at the end of FY 2010.<sup>5</sup> As of November 2019, the number of pending hearing-level cases was approximately 541,000. As part of our efforts to effectively utilize our resources to decrease the number of pending hearing requests, while maintaining and reducing the average wait for hearings,

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<sup>2</sup> We are making the national Hearing Office Workload, from November 30, 2018, available as supporting documentation, at <https://www.regulations.gov>, under “supporting and related material” for this docket, SSA-2017-0073. You may also review national Hearing Office Workload information here: [https://www.ssa.gov/appeals/DataSets/02\\_HO\\_Workload\\_Data.html](https://www.ssa.gov/appeals/DataSets/02_HO_Workload_Data.html)

<sup>3</sup> See page six of the recent letter from Acting Commissioner of Social Security Berryhill to Senate Appropriations Chairman Shelby, <https://www.ssa.gov/budget/FY19Files/2019OP.pdf>.

<sup>4</sup> *Annual Statistical Supplement to the Social Security Bulletin, 2012*, Table 2.F9, at page 2.75 (2013), available at: <https://www.ssa.gov/policy/docs/statcomps/supplement/2012/supplement12.pdf>. The *Annual Statistical Supplement to the Social Security Bulletin* is prepared in SSA’s Office of Retirement and Disability Policy, Office of Research, Evaluation, and Statistics (ORES).

<sup>5</sup> *Annual Statistical Supplement to the Social Security Bulletin, 2017*, Table 2.F9, at page 2.80 (2018), available at: <https://www.ssa.gov/policy/docs/statcomps/supplement/index.html>.

we propose to clarify when AAJs from our Appeals Council may hold hearings and issue decisions, or dismissals where appropriate, using the same rules that apply to ALJs.

The Appeals Council has authority under our current regulations to remove a request for hearing that is pending before an ALJ, and thereby assume responsibility for the case and conduct the hearing.<sup>6</sup> We have not exercised this authority, however, nor explained the circumstances under which it would be appropriate for the Appeals Council to assume responsibility for holding a hearing and issuing a decision. Each AAJ possesses the same skills and experience as the skills and experience of our ALJs. We will not implement these proposed changes in a way that could undermine the independence and integrity of our existing administrative review process. As discussed below, we take seriously our responsibility to ensure that claimants receive accurate decisions from impartial decision-makers, arrived at through a fair process that provides each claimant with the full measure of due process protections. Since the beginning of the Social Security administrative review process in 1940, we have held an unwavering commitment to a full and fair hearings process. These proposed rules would not alter the fundamental fairness of our longstanding hearings process. Under these proposed rules, our AAJs will continue to possess the same responsibility and independence they have always had to make fair and accurate decisions, free from agency interference.<sup>7</sup>

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<sup>6</sup> 20 CFR 404.956 and 416.1456.

<sup>7</sup> Our ALJs have protections that provide them with qualified decisional independence, which ensures that they conduct impartial hearings. They must decide cases based on the facts in each case and in accordance with agency policy set out in regulations, rulings, and other policy statements. Further, because of their qualified decisional independence, ALJs make their decisions free from agency pressure or pressure by a party to decide a particular case, or a particular percentage of cases, in a particular way. Consistent with our longstanding policy and practice, our AAJs will continue to follow these same principles.

What is the Appeals Council and its current role in the appeals process? What is the current role of ALJs in the process?

In most cases, we evaluate disability claims using an administrative process that consists of four levels: (1) initial determination; (2) reconsideration; (3) hearing before an ALJ; and (4) Appeals Council review.<sup>8</sup> At the first and second steps of the administrative process, Federal and State decision-makers issue initial and reconsidered determinations.

At the third step, we operate an administrative hearings system. The Office of Hearings Operations (OHO) administers our administrative hearings program and directs a nationwide field organization of ALJs, who conduct impartial de novo hearings and issue decisions on appealed determinations involving claims under titles II, VIII, and XVI of the Act. Our hearings process guarantees parties the opportunity to present evidence, written statements, and oral arguments, before a fair and impartial decisionmaker; the right to appoint someone to represent them; and the right to a decision that gives findings of fact and the reasons for the decision based on the preponderance of the evidence offered at the hearing or otherwise included in the record.

At the fourth step of the administrative review process, the Appeals Council reviews hearing decisions and dismissals of hearing requests issued under titles II, VIII, and XVI of the Act.<sup>9</sup> When an individual requests review of a hearing decision or dismissal of a hearing request, the Appeals Council may deny or dismiss the request for review, or it may grant the request and either issue a decision or remand the case for

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<sup>8</sup> 20 CFR 404.900 and 416.1400.

<sup>9</sup> The Appeals Council is part of our Office of Analytics, Review, and Oversight.

further administrative proceedings.<sup>10</sup> The Appeals Council may decide on its own motion to review a case and issue a decision or remand.<sup>11</sup> As members of the Appeals Council, AAJs impartially consider all claims presented to them with a high degree of expertise.

If the Appeals Council does not review a hearing decision, the hearing decision becomes the final decision of the Commissioner and is binding unless a party files an action in Federal district court or the decision is revised.<sup>12</sup> If the Appeals Council reviews a case and issues a decision, its decision is the final decision of the Commissioner and is binding unless a party files an action in Federal district court or the decision is revised.<sup>13</sup> Any party who is dissatisfied with the Commissioner's final decision may request judicial review of the decision.<sup>14</sup> The Appeals Council also processes cases remanded to the agency by the Federal courts.<sup>15</sup>

#### The history of the Appeals Council's hearing authority

Our proposal for AAJs to conduct hearings and issue decisions under the same rules that apply to ALJs is supported by our existing regulations,<sup>16</sup> which have authorized this option since the beginning of our hearings and appeals process in 1940.<sup>17</sup> Our existing regulations state that when a request for hearing is pending before an ALJ, the Appeals Council can assume responsibility for holding the hearing by requesting

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<sup>10</sup> 20 CFR 404.967 and 416.1467.

<sup>11</sup> 20 CFR 404.969 and 416.1469.

<sup>12</sup> 20 CFR 404.981 and 416.1481.

<sup>13</sup> Id.

<sup>14</sup> 20 CFR 404.981 and 416.1481.

<sup>15</sup> 20 CFR 404.983 and 416.1483.

<sup>16</sup> 20 CFR 404.956 and 416.1456.

<sup>17</sup> 5 FR 4169, 4172 (October 22, 1940).

jurisdiction of the case. If the Appeals Council holds a hearing, it must follow the same rules that apply to hearings before ALJs.<sup>18</sup>

Our current regulations are based on the original blueprint for our hearing and review process<sup>19</sup> and our original regulations governing the administrative review process. The original administrative review regulations provided that, “The hearing provided for in this section shall be, except as herein provided, conducted by a referee designated by the Chairman of the Appeals Council.”<sup>20</sup> The regulations also provided, however, that “[t]he Chairman may designate a member of the Appeals Council to conduct a hearing.”<sup>21</sup> The Social Security Board, an early term for the Social Security organization, envisioned that the members of the Appeals Council “should exercise [this] authority from time to time as a means of keeping in touch with the problems connected with conducting hearings and developing the records.”<sup>22</sup>

In January 2016, we recommended that AAJs hold hearings in certain cases as part of our adjudication augmentation strategy.<sup>23</sup> That proposal to use AAJs to hold hearings and issue decisions in certain categories of cases attracted significant public and congressional interest.<sup>24</sup> We ultimately decided against implementing the adjudication

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<sup>18</sup> 20 CFR 404.956 and 416.1456.

<sup>19</sup> See *Basic Provisions Adopted by the Social Security Board for the Hearing and Review of Old-Age and Survivors Insurance Claims* (January 1940). The *Basic Provisions* are reprinted as an appendix in S. Doc. No. 77-10, *Administrative Procedure in Government Agencies: Monograph of the Attorney General’s Committee on Administrative Procedure* (Part 3, Social Security Board), at 33-59 (1940).

<sup>20</sup> 20 CFR 403.709(d) (1940 Supp.)

<sup>21</sup> *Id.*

<sup>22</sup> *Basic Provisions*, at 39.

<sup>23</sup> The adjudication augmentation strategy was part of our 2016 Plan for Compassionate and Responsive Service (CARES) (available at: [https://www.ssa.gov/appeals/documents/cares\\_plan\\_2016.pdf](https://www.ssa.gov/appeals/documents/cares_plan_2016.pdf)). Under the strategy, we would have expanded (on a temporary basis) the number of cases in which AAJs on the Appeals Council could hold hearings under the authority of the regulations. *Id.* at 11.

<sup>24</sup> See *Examining Due Process in Administrative Hearings: Hearing Before the Subcommittee on Regulatory Affairs and Federal Management of the Committee on Homeland Security and Governmental*

augmentation strategy and decided instead to pursue clarifying changes to our regulations, which also gives us an opportunity to receive additional input from interested stakeholders.

Why are we proposing having AAJs hold hearings and issue decisions?

As of November 2019, pending applicants have waited from a low of about 8.5 months to a high of about 20 months for a hearing. It is incumbent upon us to develop solutions to provide more timely service to claimants, while at the same time ensuring that our hearings process remains fair and impartial. Using AAJs to serve the public in the manner we propose allows us more flexibility to use our resources to meet the needs of the public we serve and ensures that our hearings process remains fair and impartial, while providing high quality decisions to our claimants.

How will AAJ hearings and decisions compare to those by ALJs?

We propose to clarify that an AAJ from our Appeals Council may hold a hearing and issue a decision on any case pending at the hearings level under titles II, VIII, or XVI of the Act. Just as ALJs have the authority to hold hearings on a variety of disability and non-disability claims, we would not limit the kinds of claims that AAJs could hear. AAJs would be required to follow the same rules as ALJs, and the hearings they hold would apply the same due process protections as hearings held by our ALJs. The rules that govern ALJ hearings that AAJs would be required to follow include, but are not limited to, those governing the submission of evidence, the representation of claimants, and the

use of video teleconferencing. Claimants would be entitled to request Appeals Council review of any decision with which they are dissatisfied and to seek judicial review of our final decision. In addition, when the Appeals Council removes a case from the hearings level and schedules a hearing, it would mail a notice of hearing at least 75 days before the date of the hearing, just as hearing offices do under our current rules.<sup>25</sup> Further, as mentioned above, parties would have the ability to request Appeals Council review of decisions or dismissals issued by AAJs.

To ensure impartiality, we propose to preclude an AAJ who conducted a hearing or issued the decision in a case, or dismissed a hearing request, from participating in any action associated with a request for Appeals Council review in that case. If the Appeals Council denies a request for review of a decision, parties would have the ability to seek judicial review in Federal district court pursuant to section 205(g) of the Act. We expect that these revisions will provide us with much-needed flexibility to respond to and mitigate the impact of surges in hearing requests.

#### Clarifying Regulatory Language

##### **Federal Court Remands**

We propose to clarify when a case has been remanded by Federal Court, the Appeals Council has authority to hold a hearing. In §§ 404.983 and 416.1483, we propose to clarify that if the Appeals Council assumes responsibility for issuing a decision on a claim(s) that has been remanded by Federal court, it may hold a hearing if a hearing is necessary to complete adjudication of the claim(s). If the Appeals Council

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<sup>25</sup> 20 CFR 404.938(a) and 416.1438(a).

holds a hearing, it will follow the same procedures for holding hearings as ALJs, as set forth in §§ 404.929 through 404.961 and §§ 416.1429 through 416.1461. However, there may be differences in judicial review as provided in § 422.210. When the Appeals Council assumes responsibility for issuing a decision on a claim(s) that has been remanded by Federal court and no hearing is necessary, we propose that it will follow the notice and decision procedures in §§ 404.973, 404.979, 416.1473 and 416.1479, which are the procedures the Appeals Council uses when granting review.

We also propose to specify that if the Appeals Council intends to remand a case following a Federal court remand, the procedures in §§ 404.977 and 416.1477 will apply. Additionally, 20 CFR 404.984 and 416.1484 state that when a Federal court remands a case for further consideration, and an ALJ issues a new decision upon remand, the Appeals Council may assume jurisdiction of the case based on written exceptions to the ALJ's decision. The current regulations do not specify the standard the Appeals Council will use when determining whether to assume jurisdiction. We propose to specify that, in such cases, the Appeals Council may assume jurisdiction using the standards in §§ 404.970 and 416.1470, which are the standards the Appeals Council follows when determining whether to grant review of an ALJ decision.

We also propose adding language to clarify that in some circumstances following a Federal court remand, the Appeals Council may dismiss the proceedings before it. Specifically, we propose that in cases remanded under sentence four of section 205(g) of the Act only, the Appeals Council may dismiss the proceedings for any reason that an

ALJ can dismiss a request for hearing.<sup>26</sup> A request for hearing can be dismissed for reasons such as an untimely filed request for review, if neither the claimant nor designated representative appear at the hearing, if res judicata applies, or when the person requesting the hearing has no right to it.<sup>27</sup> The most common reason the Appeals Council dismisses a request for hearing after a court remand is that the claimant is deceased, and there is no substitute party.

### **Appeals Council Review Generally**

In §§ 404.970 and 416.1470, we propose to add paragraph (d) to clarify when the Appeals Council will review a case. Under these proposed rules, the Appeals Council will generally grant review of a hearing decision or dismissal only when it finds there is a reasonable probability that an error present in the ruling or hearing decision changes the outcome of the decision or benefits are owed to any party. This limitation will allow the Appeals Council to focus agency resources on correcting significant errors that may change the outcome of a case and avoid further administrative proceedings that serve only to correct harmless errors in an otherwise appropriate decision or dismissal.

In §§ 404.976 and 416.1476, we propose to clarify the procedures the Appeals Council follows on its review of hearing decisions or dismissals. We propose to clarify that the Appeals Council will evaluate all additional evidence it receives, but it will only mark the evidence as an exhibit and make part of the official record additional evidence that it determines meets the requirements of §§ 404.970(a)(5) and 416.1470(a)(5).

Consistent with the Appeals Council's current business process, when the Appeals

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<sup>26</sup> HALLEX I-3-2-51 and I-3-4-20.

<sup>27</sup> 20 CFR 404.947 and 416.1457

Council finds that additional evidence does not meet these requirements, it will still include a copy of the evidence in the transcript if the claimant seeks judicial review in Federal court. These proposed revisions apply only to the Appeals Council level of review, and would not affect how an AAJ considers additional evidence when he or she is acting in the same capacity as an ALJ.

Additionally, we propose to remove and reserve §§ 404.966 and 416.1466, testing elimination of the request for Appeals Council review. On September 23, 1997, we amended our rules to establish authority to test elimination of the request for Appeals Council review. Given our experience over the last 21 years, we no longer intend to test the elimination of the request for Appeals Council review.<sup>28</sup> Therefore, we propose to remove and reserve §§ 404.966 and 416.1466.

Sections 404.955 and 416.1455 state that an ALJ decision is binding, except in certain circumstances. Missing from the list of circumstances, however, is the Appeals Council's authority to review the decision on its own motion, which is set forth in §§ 404.969 and 416.1469. We propose to add this exception to the list of circumstances in §§ 404.955 and 416.1455.

Sections 404.973 and 416.1473 state that when the Appeals Council decides to review a case, it shall mail a notice to all parties at their last known addresses stating the reasons for the review and the issues to be considered. Consistent with our longstanding practice, we propose to clarify in §§ 404.973 and 416.1473 that if the Appeals Council decides to review a decision or dismissal and plans to either issue a fully favorable

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<sup>28</sup> See 71 FR 16424, Administrative Review Process for Adjudicating Initial Disability Claims (March 31, 2006) and 76 FR 24802, Eliminating the Decision Review Board (May 3, 2011).

decision or remand the case, the Appeals Council may send the notice of review to all parties with the decision or remand order.

In our Ticket to Work regulation, we changed the words, “administrative law judge” to read as “judge,” in § 411.175. This change conforms to the broader clarification, outlined in this rulemaking, that an AAJ may provide the same adjudication as an ALJ. We wish to make clear; the underlying substantive Ticket to Work policy is not changing with this terminology adjustment.

### **Organizational Changes**

We propose to update cited organizational component names since the current listed organization components are obsolete. We propose to replace references to the Office of Hearings and Appeals and the Office of Disability Adjudication and Review with references to OHO, the Office of Analytics, Review, and Oversight, or the Commissioner of Social Security, as appropriate.

We also propose deleting language referring to workloads neither OHO nor the Appeals Council currently handles (e.g., Medicare appeals as described in 20 CFR 422.205 are currently heard by the Medicare Appeals Council of the Department of Health and Human Services).

### **REGULATORY PROCEDURES**

#### 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?

#### 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 requirements for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed these proposed rules.

#### Executive Order 13771

These proposed rules are not subject to the requirements of Executive Order 13771 because they are administrative in nature and result in no more than de minimis costs.

#### 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. Accordingly, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

#### Paperwork Reduction Act

SSA already has existing OMB PRA-approved information collection tools relating to this proposed rule: the Request for Review of ALJ Decision or Dismissal (Form HA-520, OMB No. 0960-0277); the Waiver of Your Right to Personal Appearance Before an Administrative Law Judge (Form HA-4608, OMB No. 0960-0284); the Request to Withdraw a Hearing Request (Form HA-85, OMB No. 0960-0710); the Acknowledgement of Receipt of Notice of Hearing (Form HA-504, OMB No. 0960-0671); the Request to Show Case for Failure to Appear (Form HA-L90, OMB No. 0960-0794); and the Request for Hearing by Administrative Law Judge (Form HA-501, OMB No. 0960-0269). Because this proposed rule, once finalized, will allow for both Administrative Appeals Judges and Administrative Law Judges to hold hearings and issue decisions, we will update these forms to reflect the new language stating that

“Judges” will review the cases, hold hearings, and issue decisions. Currently, these forms use the narrow, specific designation, “Administrative Law Judges.” Once the rule is published in final, we will obtain OMB approval for this revision through non-substantive change requests for these information collections, which does not require public notice and comment under the PRA. Thus, these final rules do not create or significantly alter any existing information collections under the PRA.

(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 402**

Administrative practice and procedure, Freedom of information.

### **20 CFR Part 404**

Administrative practice and procedure, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Social security.

### **20 CFR Part 408**

Administrative practice and procedure, Reporting and recordkeeping requirements, Social security, Supplemental Security Income (SSI), Veterans.

### **20 CFR Part 411**

Administrative practice and procedure, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

**20 CFR Part 416**

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

**20 CFR Part 422**

Administrative practice and procedure, Reporting and recordkeeping requirements, Social security.

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Andrew Saul,  
Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR chapter III, parts 402, 404, 408, 411, 416 and 422, as set forth below:

Part 402—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for part 402 is revised to read as follows:

Authority: Secs. 205, 702(a)(5), and 1106 of the Social Security Act (42 U.S.C. 405, 902(a)(5), and 1306); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 18 U.S.C. 1905; 26 U.S.C. 6103; 30 U.S.C. 923b; 31 U.S.C. 9701; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Revise §402.60 to read as follows:

§402.60 Materials in the hearing offices of the Office of Hearings Operations.

(a) *Materials available for inspection.* The following materials are available for inspection in the hearing offices of the Office of Hearings Operations:

- (1) Regulations of the Social Security Administration (see §402.55(a)(2)).
- (2) Title 5, United States Code.
- (3) Compilation of the Social Security Laws.
- (4) Social Security Rulings.
- (5) Social Security Handbook.
- (6) Social Security Acquiescence Rulings.

(b) *The Hearings, Appeals, and Litigation Law (HALLEX) manual.* The HALLEX manual is available for inspection and copying in the hearing offices of the Office of Hearings Operations (fees may be applicable per §§402.155 through 402.185).

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

Subpart A—Introduction, General Provisions and Definitions

3. The authority citation for subpart A of part 404 continues to read as follows:

Authority: Secs. 203, 205(a), 216(j), and 702(a)(5) of the Social Security Act (42 U.S.C. 403, 405(a), 416(j), and 902(a)(5)) and 48 U.S.C. 1801.

4. Amend §404.2 by revising paragraph (b) to read as follows:

§404.2 General definitions and use of terms.

\* \* \* \* \*

(b) *Commissioner; Appeals Council; Administrative Law Judge; Administrative Appeals Judge defined*--(1) *Commissioner* means the Commissioner of Social Security.

(2) *Appeals Council* means the Appeals Council of the Office of Analytics, Review, and Oversight in the Social Security Administration or such member or members thereof as may be designated by the Chair of the Appeals Council.

(3) *Administrative Law Judge* means an Administrative Law Judge in the Office of Hearings Operations in the Social Security Administration.

(4) *Administrative Appeals Judge* means an Administrative Appeals Judge serving as a member of the Appeals Council.

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

5. 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).

6. 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. Subject to §404.956, the Commissioner, or his or her delegate, will appoint an administrative law judge to conduct the hearing. If circumstances warrant, the 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 conferencing, or, under certain extraordinary circumstances, by telephone. You may submit new evidence (subject to the provisions of §404.935), 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 conferencing, or by telephone, the administrative law judge will make a decision

based on the preponderance of the evidence that is in the file and, subject to the provisions of §404.935, any new evidence that may have been submitted for consideration.

7. Amend §404.955 by, revising the section heading, redesignating paragraphs (c) through (f) as paragraphs (d) through (g), and adding new paragraph (c) to read as follows:

§404.955 The effect of a hearing decision.

\* \* \* \* \*

(c) The Appeals Council decides on its own motion to review the decision under the procedures in §404.969;

\* \* \* \* \*

8. Revise §404.956 to read as follows:

§404.956 Removal of a hearing request(s) to the Appeals Council.

(a) *Removal.* The Appeals Council may assume responsibility for a hearing request(s) pending at the hearing level of the administrative review process.

(b) *Notice.* We will mail a notice to all parties at their last known address telling them that the Appeals Council has assumed responsibility for the case(s).

(c) *Procedures applied.* If the Appeals Council assumes responsibility for a hearing request(s), it shall conduct all proceedings in accordance with the rules set forth in §§404.929 through 404.961, as applicable.

(d) *Appeals Council review.* If the Appeals Council assumes responsibility for your hearing request under this section and you or any other party is dissatisfied with the hearing decision or with the dismissal of a hearing request, you may request that the Appeals Council review that action following the procedures in §§404.967 through 404.982. The Appeals Council may also decide on its own motion to review the action that was taken in your case under §404.969. The administrative appeals judge who conducted a hearing, issued a hearing decision in your case, or dismissed your hearing request will not participate in any action associated with your request for Appeals Council review of that case.

(e) *Ancillary provisions.* For the purposes of the procedures authorized by this section, the regulations of part 404 shall apply to authorize a member of the Appeals Council to exercise the functions performed by an administrative law judge under subpart J of part 404.

**§ 404.966 [REMOVED AND RESERVED]**

9. Section 404.966 is removed and reserved.

10. Amend §404.970 by revising paragraph (a) and adding paragraph (d) to read as follows:

§404.970 Cases the Appeals Council will review.

(a) Subject to paragraph (d) of this section, the Appeals Council will review a case at a party's request or on its own motion if—

(1) There appears to be an abuse of discretion by the administrative law judge or administrative appeals judge who heard the case;

(2) There is an error of law;

(3) The action, findings or conclusions in the hearing decision or dismissal order are not supported by substantial evidence;

(4) There is a broad policy or procedural issue that may affect the general public interest; or

(5) Subject to paragraph (b) of this section, the Appeals Council receives additional evidence that is new, material, and relates to the period on or before the date of the hearing decision, and there is a reasonable probability that the additional evidence would change the outcome of the decision.

\* \* \* \* \*

(d) The Appeals Council will not review a case based on an error or abuse of discretion in the admission or exclusion of evidence or based on an error, defect, or omission in any ruling or decision unless the Appeals Council finds there is a reasonable probability that the error, abuse of discretion, defect, or omission, either alone or when considered with other aspects of the case, changed the outcome of the case or the amount of benefits owed to any party.

11. Revise §404.973 to read as follows:

§404.973 Notice of Appeals Council review.

When the Appeals Council decides to review a case, it shall mail a notice to all parties at their last known address stating the reasons for the review and the issues to be considered. However, when the Appeals Council plans to issue a decision that is fully favorable to all parties or plans to remand the case for further proceedings, it may send the notice of Appeals Council review to all parties with the decision or remand order.

12. Amend §404.976 by, revising the section heading and paragraph (b), and adding paragraph (c);

The revisions and addition read as follows:

§404.976 Procedures before the Appeals Council.

\* \* \* \* \*

(b) *Evidence the Appeals Council will exhibit.* The Appeals Council will evaluate all additional evidence it receives, but will only mark as an exhibit and make part of the official record additional evidence that it determines meets the requirements of §404.970(a)(5) and (b).

(c) *Oral argument.* You may request to appear before the Appeals Council to present oral argument in support of your request for review. The Appeals Council will grant your request if it decides that your case raises an important question of law or policy or that oral argument would help to reach a proper decision. If your request to appear is granted, the Appeals Council will tell you the time and place of the oral argument at least 10 business days before the scheduled date. The Appeals Council will determine whether your appearance, or the appearance of any other person relevant to the proceeding, will be in person, by video teleconferencing, or by telephone.

13. Revise §404.983 to read as follows:

§404.983 Case remanded by a Federal court.

(a) *General rule.* When a Federal court remands a case to the Commissioner for further consideration, the Appeals Council, acting on behalf of the Commissioner, may make a decision following the provisions in paragraph (b) of this section, dismiss the proceedings, except as provided in paragraph (c) of this section, or remand the case to an administrative law judge following the provisions in paragraph (d) of this section with instructions to take action and issue a decision or return the case to the Appeals Council with a recommended decision. Any issues relating to the claim(s) may be considered by the Appeals Council or administrative law judge whether or not they were raised in the administrative proceedings leading to the final decision in the case.

(b) *Appeals Council decision.* If the Appeals Council assumes responsibility under paragraph (a) of this section for issuing a decision, it will follow the procedures explained in §§404.973 and 404.979. If the Appeals Council assumes responsibility for issuing a decision and a hearing is necessary to complete adjudication of the claim(s), the Appeals Council will hold a hearing using the procedures set forth in §§404.929 through 404.961, except as provided in §422.210 of this chapter.

(c) *Appeals Council dismissal.* After a Federal court remands a case to the Commissioner for further consideration, the Appeals Council may dismiss the proceedings before it for any reason that an administrative law judge may dismiss a request for hearing under §404.957. The Appeals Council will not dismiss the proceedings in a claim where we are otherwise required by law or a judicial order to file the Commissioner's additional and modified findings of fact and decision with a court.

(d) *Appeals Council remand.* If the Appeals Council remands a case under paragraph (a) of this section, it will follow the procedures explained in §404.977.

14. Amend §404.984 by revising paragraph (a) to read as follows:

§404.984 Appeals Council review of administrative law judge decision in a case remanded by a Federal court.

(a) *General.* In accordance with §404.983, when a case is remanded by a Federal court for further consideration and the Appeals Council remands the case to an administrative law judge, the decision of the administrative law judge will become the final decision of the Commissioner after remand on your case unless the Appeals Council assumes jurisdiction of the case. The Appeals Council may assume jurisdiction, using the standard set forth in §404.970, based on written exceptions to the decision of the administrative law judge which you file with the Appeals Council or based on its authority pursuant to paragraph (c) of this section. If the Appeals Council assumes jurisdiction of your case, any issues relating to your claim may be considered by the Appeals Council whether or not they were raised in the administrative proceedings leading to the final decision in your case or subsequently considered by the administrative law judge in the administrative proceedings following the court's remand order. The Appeals Council will either make a new, independent decision based on the preponderance of the evidence in the record that will be the final decision of the Commissioner after remand, dismiss a claim(s), or remand the case to an administrative law judge for further proceedings, including a new decision.

\* \* \* \* \*

15. Amend §404.999c by revising paragraph (d)(3)(i)(C) to read as follows:

§404.999c What travel expenses are reimbursable.

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) \* \* \*

(C) The designated geographic service area of the Office of Hearings Operations hearing office having responsibility for providing the hearing.

\* \* \* \* \*

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Subpart A--Introduction, General Provision and Definitions

17. The authority citation for subpart A of part 408 continues to read as follows:

Authority: Secs. 702(a)(5) and 801-813 of the Social Security Act (42 U.S.C. 902(a)(5) and 1001-1013).

18. Amend §408.110 by revising paragraph (b) to read as follows:

§408.110 General definitions and use of terms.

\* \* \* \* \*

(b) *Commissioner; Appeals Council; Administrative Law Judge defined--*(1) *Commissioner* means the Commissioner of Social Security.

(2) *Appeals Council* means the Appeals Council of the Office of Analytics, Review, and Oversight in the Social Security Administration or such member or members thereof as may be designated by the Chair of the Appeals Council.

(3) *Administrative Law Judge* means an Administrative Law Judge in the Office of Hearings Operations in the Social Security Administration.

\* \* \* \* \*

PART 411—THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM

19. The authority citation for part 411 continues to read as follows:

Authority: Secs. 702(a)(5) and 1148 of the Social Security Act (42 U.S.C.

902(a)(5) and 1320b-19); sec. 101(b)-(e), Public Law 106-170, 113 Stat. 1860, 1873 (42 U.S.C. 1320b-19 note).

Subpart C—Suspension of Continuing Disability Reviews for Beneficiaries Who Are Using a Ticket

20. Amend §411.175 by revising paragraph (a) to read as follows:

§411.175 What if a continuing disability review is begun before my ticket is in use?

(a) If we begin a continuing disability review before the date on which your ticket is in use, you may still assign the ticket and receive services from an employment network or a State vocational rehabilitation agency acting as an employment network under the Ticket to Work program, or you may still receive services from a State vocational rehabilitation agency that elects the vocational rehabilitation cost reimbursement option. However, we will complete the continuing disability review. If in this review we determine that you are no longer disabled, in most cases you will no longer be eligible to receive benefit payments. However, if your ticket was in use before we determined that you are no longer disabled, in certain circumstances you may continue to receive benefit payments (see §§404.316(c), 404.337(c), 404.352(d), and 416.1338 of this chapter). If you appeal the decision that you are no longer disabled, you may also choose to have your benefits continued pending reconsideration or a hearing

before a judge on the cessation determination (see §§404.1597a and 416.996 of this chapter).

\* \* \* \* \*

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

Subpart A—Introduction, General Provisions and Definitions

21. The authority citation for subpart A of part 416 continues to read as follows:

Authority: Secs. 702(a)(5) and 1601-1635 of the Social Security Act (42 U.S.C. 902(a)(5) and 1381-1383d); sec. 212, Pub. L. 93-66, 87 Stat. 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94-241, 90 Stat. 268 (48 U.S.C. 1681 note).

22. Amend §416.120 by revising paragraph (b) to read as follows:

§416.120 General definitions and use of terms.

\* \* \* \* \*

(b) *Commissioner; Appeals Council; Administrative Law Judge; Administrative Appeals Judge defined*--(1) *Commissioner* means the Commissioner of Social Security.

(2) *Appeals Council* means the Appeals Council of the Office of Analytics, Review, and Oversight in the Social Security Administration or such member or members thereof as may be designated by the Chair of the Appeals Council.

(3) *Administrative Law Judge* means an Administrative Law Judge in the Office of Hearings Operations in the Social Security Administration.

(4) *Administrative Appeals Judge* means an Administrative Appeals Judge serving as a member of the Appeals Council.

\* \* \* \* \*

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

23. 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).

24. 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. Subject to §416.1456, the Commissioner, or his or her delegate, will appoint an administrative law judge to conduct the hearing. If circumstances warrant, the 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 conferencing, or, under certain extraordinary circumstances, by telephone. You may submit new evidence (subject to the provisions of §416.1435), 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 conferencing, or by telephone, the administrative law judge will make a decision based on the preponderance of the evidence that is in the file and, subject to the provisions of §416.1435, any new evidence that may have been submitted for consideration.

25. Amend §416.1455 by, revising the section heading, redesignating paragraphs (c) through (f) as paragraphs (d) through (g), and adding new paragraph (c) to read as follows:

§416.1455 The effect of a hearing decision.

\* \* \* \* \*

(c) The Appeals Council decides on its own motion to review the decision under the procedures in §416.1469;

\* \* \* \* \*

26. Revise §416.1456 to read as follows:

§416.1456 Removal of a hearing request(s) to the Appeals Council.

(a) *Removal.* The Appeals Council may assume responsibility for a hearing request(s) pending at the hearing level of the administrative review process.

(b) *Notice.* We will mail a notice to all parties at their last known address telling them that the Appeals Council has assumed responsibility for the case(s).

(c) *Procedures applied.* If the Appeals Council assumes responsibility for a hearing request(s), it shall conduct all proceedings in accordance with the rules set forth in §§416.1429 through 416.1461, as applicable.

(d) *Appeals Council review.* If the Appeals Council assumes responsibility for your hearing request under this section and you or any other party is dissatisfied with the hearing decision or with the dismissal of a hearing request, you may request that the Appeals Council review that action following the procedures in §§416.1467 through 416.1482. The Appeals Council may also decide on its own motion to review the action that was taken in your case under §416.1469. The administrative appeals judge who

conducted a hearing, issued a hearing decision in your case, or dismissed your hearing request will not participate in any action associated with your request for Appeals Council review of that case.

(e) *Ancillary provisions.* For the purposes of the procedures authorized by this section, the regulations of part 416 shall apply to authorize a member of the Appeals Council to exercise the functions performed by an administrative law judge under subpart N of part 416.

§ 416.1466 [REMOVED AND RESERVED]

27. Section 416.1466 is removed and reserved.

28. Amend §416.1470 by revising paragraph (a) and adding paragraph (d) to read as follows:

§416.1470 Cases the Appeals Council will review.

(a) Subject to paragraph (d) of this section, the Appeals Council will review a case at a party's request or on its own motion if—

(1) There appears to be an abuse of discretion by the administrative law judge or administrative appeals judge who heard the case;

(2) There is an error of law;

(3) The action, findings or conclusions in the hearing decision or dismissal order are not supported by substantial evidence;

(4) There is a broad policy or procedural issue that may affect the general public interest; or

(5) Subject to paragraph (b) of this section, the Appeals Council receives additional evidence that is new, material, and relates to the period on or before the date of the hearing decision, and there is a reasonable probability that the additional evidence would change the outcome of the decision.

\* \* \* \* \*

(d) The Appeals Council will not review a case based on an error or abuse of discretion in the admission or exclusion of evidence or based on an error, defect, or omission in any ruling or decision unless the Appeals Council finds there is a reasonable probability that the error, abuse of discretion, defect, or omission, either alone or when considered with other aspects of the case, changed the outcome of the case or the amount of benefits owed to any party.

29. Revise §416.1473 to read as follows:

§416.1473 Notice of Appeals Council review.

When the Appeals Council decides to review a case, it shall mail a notice to all parties at their last known address stating the reasons for the review and the issues to be considered. However, when the Appeals Council plans to issue a decision that is fully favorable to all parties or plans to remand the case for further proceedings, it may send the notice of Appeals Council review to all parties with the decision or remand order.

30. Amend §416.1476 by, revising the section heading and paragraph (b), and adding paragraph (c).

The revisions and addition read as follows:

§416.1476 Procedures before the Appeals Council.

\* \* \* \* \*

(b) *Evidence the Appeals Council will exhibit.* The Appeals Council will evaluate all additional evidence it receives, but will only mark as an exhibit and make part of the official record additional evidence that it determines meets the requirements of §416.1470(a)(5) and (b).

(c) *Oral argument.* You may request to appear before the Appeals Council to present oral argument in support of your request for review. The Appeals Council will grant your request if it decides that your case raises an important question of law or policy or that oral argument would help to reach a proper decision. If your request to appear is granted, the Appeals Council will tell you the time and place of the oral argument at least 10 business days before the scheduled date. The Appeals Council will determine whether your appearance, or the appearance of any other person relevant to the proceeding, will be in person, by video teleconferencing, or by telephone.

31. Revise §416.1483 to read as follows:

§416.1483 Case remanded by a Federal court.

(a) *General rule.* When a Federal court remands a case to the Commissioner for further consideration, the Appeals Council, acting on behalf of the Commissioner, may make a decision following the provisions in paragraph (b) of this section, dismiss the proceedings, except as provided in paragraph (c) of this section, or remand the case to an administrative law judge following the provisions in paragraph (d) of this section with instructions to take action and issue a decision or return the case to the

Appeals Council with a recommended decision. Any issues relating to the claim(s) may be considered by the Appeals Council or administrative law judge whether or not they were raised in the administrative proceedings leading to the final decision in the case.

(b) *Appeals Council decision.* If the Appeals Council assumes responsibility under paragraph (a) of this section for issuing a decision, it will follow the procedures explained in §§416.1473 and 416.1479. If the Appeals Council assumes responsibility for issuing a decision and a hearing is necessary to complete adjudication of the claim(s), the Appeals Council will hold a hearing using the procedures set forth in §§416.1429 through 416.1461, except as provided in §422.210 of this chapter.

(c) *Appeals Council dismissal.* After a Federal court remands a case to the Commissioner for further consideration, the Appeals Council may dismiss the proceedings before it for any reason that an administrative law judge may dismiss a request for hearing under §416.1457. The Appeals Council will not dismiss the proceedings in a claim where we are otherwise required by law or a judicial order to file the Commissioner's additional and modified findings of fact and decision with a court.

(d) *Appeals Council remand.* If the Appeals Council remands a case under paragraph (a) of this section, it will follow the procedures explained in §416.1477.

32. Amend §416.1484 by revising paragraph (a) to read as follows:

§416.1484 Appeals Council review of administrative law judge decision in a case remanded by a Federal court.

(a) *General.* In accordance with §416.1483, when a case is remanded by a Federal court for further consideration and the Appeals Council remands the case to an administrative law judge, the decision of the administrative law judge will become the final decision of the Commissioner after remand on your case unless the Appeals Council assumes jurisdiction of the case. The Appeals Council may assume jurisdiction, using the standard set forth in §416.1470, based on written exceptions to the decision of the administrative law judge which you file with the Appeals Council or based on its authority pursuant to paragraph (c) of this section. If the Appeals Council assumes jurisdiction of your case, any issues relating to your claim may be considered by the Appeals Council whether or not they were raised in the administrative proceedings leading to the final decision in your case or subsequently considered by the administrative law judge in the administrative proceedings following the court's remand order. The Appeals Council will either make a new, independent decision based on the preponderance of the evidence in the record that will be the final decision of the Commissioner after remand, dismiss a claim(s), or remand the case to an administrative law judge for further proceedings, including a new decision.

\* \* \* \* \*

33. Amend §416.1498 by revising paragraph (d)(3)(i)(C) to read as follows:

§416.1498 What travel expenses are reimbursable.

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) \* \* \*

(C) The designated geographic service area of the Office of Hearings Operations hearing office having responsibility for providing the hearing.

\* \* \* \* \*

## PART 422—ORGANIZATION AND PROCEDURES

34. Revise the heading for Subpart C to read as follows:

Subpart C—Hearings, Appeals Council Review, and Judicial Review Procedures

35. The authority citation for subpart C of part 422 continues to read as follows:

Authority: Secs. 205, 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 421, and 902(a)(5)); 30 U.S.C. 923(b).

36. Amend §422.201 by revising the introductory text to read as follows

§422.201 Material included in this subpart.

This subpart describes in general the procedures relating to hearings, review by the Appeals Council of the hearing decision or dismissal, and court review in cases decided under the procedures in parts 404, 408, 410, and 416 of this chapter. It also describes the procedures for requesting a hearing or Appeals Council review, and for instituting a civil action for court review of cases decided under these parts. For detailed provisions relating to hearings, review by the Appeals Council, and court review, see the following references as appropriate to the matter involved:

\* \* \* \* \*

37. Amend §422.203 by revising paragraphs (b) and (c) to read as follows:

§422.203 Hearings.

\* \* \* \* \*

(b) *Request for hearing.* (1) A request for a hearing under paragraph (a) of this section may be made using the form(s) we designate for this purpose, or by any other writing requesting a hearing. The request shall be filed either electronically in the manner we prescribe or at an office of the Social Security Administration, usually a district office or a branch office, or at the Veterans' Administration Regional Office in the Philippines (except in title XVI cases), or at a hearing office of the Office of Hearings Operations, or with the Appeals Council. A qualified railroad retirement beneficiary may choose to file a request for a hearing under part A of title XVIII with the Railroad Retirement Board.

(2) Unless an extension of time has been granted for good cause shown, a request for hearing must be filed within 60 days after the receipt of the notice of the reconsidered or revised determination, or after an initial determination described in 42 CFR 498.3(b) and (c) (see §§404.933, 410.631, and 416.1433 of this chapter and 42 CFR 405.722, 498.40, and 417.260.)

(c) *Hearing decision or other action.* Generally, the administrative law judge, or an administrative appeals judge under §404.956 or 416.1456 of this chapter, will either decide the case after hearing (unless hearing is waived) or, if appropriate, dismiss the request for hearing. With respect to a hearing on a determination under paragraph (a)(1) of this section, the administrative law judge may certify the case with a recommended decision to the Appeals Council for decision. The administrative law judge, or an attorney advisor under §404.942 or 416.1442 of this chapter, or an administrative appeals judge under §404.956 or 416.1456 of this chapter, must base the hearing

decision on the preponderance of the evidence offered at the hearing or otherwise included in the record.

38. Revise §422.205 to read as follows:

§422.205 Proceedings before the Appeals Council.

(a) *Appeals Council hearing decisions.* Appeals Council decisions and dismissals issued on hearing requests removed under §§404.956 and 416.1456 of this chapter and decisions and dismissals described in §§422.203(c) require one Appeals Council member signature. Requests for review of hearing decisions issued by the Appeals Council may be filed pursuant to §§404.968 and 416.1468 of this chapter and paragraph (b) of this section.

(b) *Appeals Council review.* Any party to a hearing decision or dismissal may request a review of such action by the Appeals Council. This request may be made on Form HA-520, Request for Review of Hearing Decision/Order, or by any other writing specifically requesting review. Form HA-520 may be obtained from any Social Security district office or branch office, or at any other office where a request for a hearing may be filed. (For time and place of filing, see §§404.968 and 416.1468 of this chapter.)

(c) *Review of a hearing decision, dismissal, or denial.* The denial of a request for review of a hearing decision concerning a determination under §422.203(a)(1) shall be by such appeals officer or appeals officers or by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair. The denial of a request for review of a hearing dismissal, the dismissal of a request for review, the denial of a request for review of a hearing decision whenever

such hearing decision after such denial would not be subject to judicial review as explained in §422.210(a), or the refusal of a request to reopen a hearing or Appeals Council decision concerning a determination under §422.203(a)(1) shall be by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair.

(d) *Appeals Council review panel.* Whenever the Appeals Council reviews a hearing decision under §§404.967, 404.969, 416.1467, or 416.1469 of this chapter and the claimant does not appear personally or through representation before the Appeals Council to present oral argument, such review will be conducted by a panel of not less than two members of the Appeals Council designated in the manner prescribed by the Chair or Deputy Chair of the Appeals Council. In the event of disagreement between a panel composed of only two members, the Chair or Deputy Chair, or his or her delegate, who must be a member of the Appeals Council, shall participate as a third member of the panel. When the claimant appears in person or through representation before the Appeals Council in the location designated by the Appeals Council, the review will be conducted by a panel of not less than three members of the Appeals Council designated in the manner prescribed by the Chair or Deputy Chair. Concurrence of a majority of a panel shall constitute the decision of the Appeals Council unless the case is considered as provided under paragraph (e) of this section.

(e) *Appeals Council meetings.* On call of the Chair, the Appeals Council may meet en banc or a representative body of Appeals Council members may be convened to consider any case arising under paragraph (c) or (d) of this section. Such representative body shall be comprised of a panel of not less than five members designated by the Chair

as deemed appropriate for the matter to be considered. The Chair or Deputy Chair shall preside, or in his or her absence, the Chair shall designate a member of the Appeals Council to preside. A majority vote of the designated panel, or of the members present and voting, shall constitute the decision of the Appeals Council.

(f) *Temporary assignments of ALJs.* The Chair may designate an administrative law judge to serve as a member of the Appeals Council for temporary assignments. An administrative law judge shall not be designated to serve as a member on any panel where such panel is conducting review on a case in which such individual has been previously involved.

39. Amend §422.210 by revising paragraph (a) and adding paragraph (e) to read as follows:

§422.210 Judicial review.

(a) *General.* A claimant may obtain judicial review of a decision by an administrative law judge or administrative appeals judge if the Appeals Council has denied the claimant's request for review, or of a decision by the Appeals Council when that is the final decision of the Commissioner. A claimant may also obtain judicial review of a reconsidered determination, or of a decision of an administrative law judge or an administrative appeals judge, where, under the expedited appeals procedure, further administrative review is waived by agreement under §404.926 or 416.1426 of this chapter or as appropriate. There are no amount-in-controversy limitations on these rights of appeal.

\* \* \* \* \*

(e) *Appeals Council review panel after Federal court remand.* When the Appeals Council holds a hearing under §404.983 or 416.1483 of this chapter, such hearing will be conducted and a decision will be issued by a panel of not less than two members of the Appeals Council designated in the manner prescribed by the Chair or Deputy Chair of the Appeals Council. When the Appeals Council issues a decision under §§404.983 and 416.1483 of this chapter without holding a hearing, a decision will be issued by a panel of not less than two members of the Council designated in the same manner prescribed by the Chair or Deputy Chair of the Council. In the event of disagreement between a panel composed of only two members, the Chair or Deputy Chair, or his or her delegate, who must be a member of the Council, shall participate as a third member of the panel.

[FR Doc. 2019-27019 Filed: 12/19/2019 8:45 am; Publication Date: 12/20/2019]