

Social Security Online

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Hearings and Appeals



BEST PRACTICES FOR CLAIMANTS' REPRESENTATIVES

Best Practices

- > **Before** an Administrative Law Judge Hearing
- > **At** an Administrative Law Judge Hearing
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We value a cooperative relationship with the representative community to ensure better service to the American people. As such, below is a list of Best Practices for claimant representatives that was released to the National Organization of Social Security Claimants' Representatives (NOSSCR) in May 2009. The suggestions contained in the list will facilitate timely service to claimants awaiting a hearing.

IN GENERAL:

1. OBTAIN AS MUCH INFORMATION AS POSSIBLE FROM OUR WEBSITE.

This is a general rule for all dealings with SSA. At the hearing level, the majority of claimants are represented, and we encourage our employees to cooperate as much as possible with requests for information or assistance from representatives. However, every personal contact with hearing office personnel precludes the employee from performing other responsibilities relating to other hearing requests. Every five minutes that is saved on individual claims converts to thousands of saved hours that can be devoted to processing other claims.

2. TIMELY SUBMIT THE FORM SSA-1696 AND FEE AGREEMENT.

If applicable, obtain and submit withdrawals and waivers from prior representatives to avoid possible delay in payment.

3. ESTABLISH A GOOD WORKING RELATIONSHIP WITH HEARING OFFICE STAFF AND MANAGEMENT.

You should participate in periodic group meetings with the Hearing Office Chief Administrative Law Judge and Hearing Office Director in the offices in which you practice. Open dialogue allows both representatives and hearing offices to exchange suggestions as to how to improve service in the local area.

4. TIMELY ALERT THE HEARING OFFICE OF ANY CHANGE OF ADDRESS OR PHONE NUMBER FOR EITHER YOURSELF OR THE CLAIMANT.

This would help reduce duplication of effort by hearing offices when notices are sent to either individual.

5. SUBMIT UPDATED FORM SSA-827 WITH THE REQUEST

FOR HEARING.

If the hearing office needs to request information on short notice for a possible on-the-record (OTR) decision or a dire need review, or for any other reason, it is very helpful to have updated release forms already in the file.

6. EVEN IF A CASE IS PENDING AT THE HEARING LEVEL, A FORM SSA-1695 SHOULD BE SUBMITTED TO THE SSA FIELD OFFICE, NOT THE HEARING OFFICE.

This form deals solely with payment to the representative and contains personal information, including a representative's Social Security number. If a SSA-1695 is received at a hearing office, it is immediately forwarded to the SSA field office for processing. Submitting this form to the SSA field office initially would significantly reduce the time hearing office staff spends forwarding documentation, and reduce the likelihood that the form will either be lost or improperly associated with the claimant's file.

BEFORE AN ADMINISTRATIVE LAW JUDGE HEARING:

Under 20 CFR §§ 404.935 and 416.1435, claimants have an existing duty to submit additional evidence with a Request for Hearing or within 10 days of submitting the request. Therefore, we encourage all representatives to review the file and submit evidence as early in the hearing process as possible. Do not wait until the case is scheduled to submit evidence. ODAR is aggressively screening cases for potential "on the record" situations and updated evidence is helpful in identifying cases that may be reversed without the need for a hearing. At the same time, we also encourage representatives to be mindful of hearing office resources required to burn CDs, and ask that representatives not request excess copies of CDs.

Submitting Evidence**1. DO NOT SUBMIT DUPLICATIVE EVIDENCE.**

This is a problematic and time consuming issue dealt with at the hearing level, and significantly delays preparation of cases for hearing. Hearing office staff often spend several hours on any given case sorting out duplicate evidence. The sooner a case is prepared and exhibited, the sooner the case can be scheduled.

2. SUBMIT EVIDENCE AS FAR IN ADVANCE OF THE HEARING AS POSSIBLE, USING ELECTRONIC RECORDS EXPRESS.

Up to 200 pages at one time can be faxed into the electronic folder using the fax number and bar code supplied with the Acknowledgment of Hearing notice. However, we do recommend smaller submissions when possible (less than 30 pages), as smaller exhibits open more quickly. Early submission (more than 10 working days before hearing) allows hearing office personnel to exhibit the evidence and ensures that the claimant's copy of the file includes a copy of all the evidence that has been received. It also gives the ALJ time to review all the evidence, and helps to ensure that all relevant evidence is timely provided to experts scheduled to appear at hearing.

3. BEFORE FAXING EVIDENCE, CHECK TO ENSURE THE EVIDENCE YOU ARE SUBMITTING MATCHES THE CLAIMANT.

This simple precaution would significantly reduce the time hearing offices spend contacting representatives and re-associating evidence with the appropriate file.

4. MAKE SURE THE BARCODE IS THE FIRST ITEM FAXED IN ORDER TO ENSURE PROPER IDENTIFICATION OF ALL RECORDS.

If you do not have a barcode for a particular case, please ask the hearing office to provide you with one. Bar codes may be photocopied and used more than once.

5. SUBMIT A COVER LETTER WITH THE EVIDENCE IDENTIFYING WHAT IS BEING SUBMITTED AND THE DATE OF THE EVIDENCE.

Submitting evidence with a cover letter and the dates of the evidence will assist hearing office staff in identifying duplicates and in exhibiting the records.

6. AVOID SUBMITTING VOLUMINOUS EVIDENCE AT THE LAST MINUTE.

This does not provide sufficient time for hearing office staff to associate the evidence with the file, or provide the ALJ and experts adequate time to review the evidence.

7. WHEN FAXING EVIDENCE FROM DIFFERENT SOURCES INTO THE ELECTRONIC FOLDER, SEPARATE SOURCES BY PLACING A BAR CODE AS THE FIRST DOCUMENT FOR EACH SOURCE AND SUBMIT IN CHRONOLOGICAL ORDER.

This assists hearing office staff in reviewing the evidence for duplicates and in exhibiting the records.

- 8. DO NOT SUBMIT MEDICAL EVIDENCE WITH NON-MEDICAL DOCUMENTS SUCH AS APPOINTMENT OF REPRESENTATIVE FORMS OR FEE AGREEMENTS.**
Medical and non-medical documents should be submitted separately. Because these documents are included in different sections of the folder, it requires more time to separate documents if they are submitted together.

Issues to Address and Supporting Evidence

- 1. WHEN POSSIBLE, OBTAIN A MEDICAL SOURCE STATEMENT FROM A TREATING SOURCE WHICH IDENTIFIES THE LIMITATIONS IMPOSED BY THE CLAIMANT'S IMPAIRMENTS. SUBMIT WITH SUPPORTING EVIDENCE OR DIRECT ATTENTION TO SUPPORTING EVIDENCE ALREADY IN THE FILE.**
Treating source statements can greatly assist an ALJ in assessing Step 3 of the sequential evaluation and the claimant's residual functional capacity.
- 2. DEAL WITH EMPLOYMENT (SUBSTANTIAL GAINFUL ACTIVITY, UNSUCCESSFUL WORK ATTEMPTS, SHELTERED WORK ENVIRONMENTS, ETC.) OR EARNINGS ISSUES IN A PRE-HEARING MEMORANDUM OR AT THE HEARING.**
Be sure to distinguish long term disability, vacation, or bonus pay which may appear as earnings after alleged onset.
- 3. DEAL WITH WORKER'S COMPENSATION ISSUES IN A PRE-HEARING MEMORANDUM OR AT THE HEARING.**
If there has been a settlement, provide appropriate proof.
- 4. SUBMIT CONCISE PRE-HEARING BRIEFS WHENEVER POSSIBLE.**
This assists an ALJ in preparing for the hearing.

Submitting On-The-Record (OTR) Requests

- 1. CLEARLY LABEL AN OTR REQUEST "OTR REQUEST," AND SUBMIT AS EARLY AS POSSIBLE (BUT ONLY WHEN A REQUEST IS APPROPRIATE).**
OTR requests are not appropriate in every case, and should only be requested when a favorable outcome is supported by the evidence in the record.

2. **IDENTIFY EVIDENCE THAT SUPPORTS THE OTR.**
OTR requests should include a concise summary at the beginning of the brief outlining the argument, followed by a more detailed explanation specifically directing the reviewer's attention to evidence supporting a favorable decision.
3. **MAKE SURE EVIDENCE SUPPORTS ONSET DATE.**
Onset issues are the most frequent reason an OTR request cannot be granted.
4. **USE FIT TEMPLATES TO SUBMIT OTR REQUESTS.**
A CD of these templates is available from hearing office personnel.

Working with Attorney Adjudicators

1. **WHEN CONTACTED, WORK WITH ATTORNEY ADJUDICATORS TO EXPEDITE DECISIONS IN APPROPRIATE CASES.**
Attorney Adjudicators review and screen cases for an OTR. Currently, attorney adjudicators have the authority to issue a fully favorable decision OTR when it is warranted. If you are contacted by a hearing office attorney regarding substantial gainful activity or onset issues in a particular case, discuss the matter with the attorney to see if the issue can be resolved without the need of a hearing.

Submitting Dire Need, Terminal Illness requests, or information regarding incarcerated individuals

1. **NOTIFY THE HEARING OFFICE WHEN THE CLAIMANT HAS A TERMINAL (TERI) CONDITION, IS HOMELESS, OR IS IN DIRE NEED, AND INCLUDE APPROPRIATE DOCUMENTATION SUPPORTING THESE ALLEGATIONS.**
Notifying a hearing office of these circumstances can significantly expedite the processing of a case, if the allegation is supported. The criteria and reference links for critical case processing can be found in our provisions in HALLEX I-2-1-40 (Critical Cases).
2. **WITH THE REQUEST AND DOCUMENTATION SUPPORTING THE ALLEGATION, SUBMIT UPDATED EVIDENCE SUPPORTING THE CLAIM FOR AN OTR REVIEW.**
If a dire need case can be awarded without the need of a hearing, this works to the advantage of the claimant and the

hearing office.

3. IF CLAIMANT IS INCARCERATED, PROVIDE THE HEARING OFFICE WITH THE ADDRESS OF THE FACILITY AND THE RELEASE DATE.

There are many difficulties that arise when an individual who has requested a hearing is incarcerated. For example, if an in-person hearing must be conducted, there are varying rules and procedures depending on the facility in which the claimant is incarcerated. Some claimants are transferred after a hearing has been scheduled but before the hearing has been held. For these types of reasons, it is very important that the hearing office is apprised at all times of the status of an incarcerated claimant.

Scheduling Hearings

1. DO NOT REQUEST POSTPONEMENTS UNLESS ESSENTIAL.

Be flexible with providing dates and times for hearings, and request postponements in writing in a timely fashion wherever possible. When you have already agreed to the time of a scheduled hearing, avoid requesting a postponement for a conflict that arises later.

AT AN ADMINISTRATIVE LAW JUDGE HEARING:

1. WHEN REPRESENTING A CHILD, BE PREPARED TO HAVE SOMEONE AVAILABLE TO LOOK AFTER THE CHILD, IF POSSIBLE, AFTER HE OR SHE TESTIFIES OR IF HE OR SHE DOES NOT TESTIFY.

Representatives should avoid keeping the child in the hearing room when it will disrupt the hearing process or is otherwise not appropriate.

AFTER AN ADMINISTRATIVE LAW JUDGE HEARING:

1. SUBMIT POST HEARING EVIDENCE AS SOON AS POSSIBLE, WITH A WRITTEN BRIEF IDENTIFYING HOW THE EVIDENCE SUPPORTS A FAVORABLE DECISION.

This will assist the ALJ in reviewing the records and

appropriately focus attention on the information supporting your arguments, resulting in the issuance of a timely decision.

2. WHENEVER POSSIBLE, SUBMIT FEE PETITIONS WITHIN 60 DAYS OF A DECISION OR AS SOON AS POSSIBLE AFTER SERVICES HAVE BEEN TERMINATED OR WITHDRAWN.

Submitting fee documents within this time frame will have a significant impact on the time a representative waits for payment. This reduces the number of follow ups necessary to determine if a fee petition is going to be submitted, allowing the ALJ to act on the fee authorization at an earlier date. It reduces the likelihood that funds withheld for direct payment will be released to the claimant, and reduces the wait time if administrative review of an authorized fee is requested.

ACTIONS BEFORE THE APPEALS COUNCIL:

1. IF REQUESTING A COPY OF THE RECORD, SUBMIT A CLEAR REQUEST.

The request should be clearly stated **at the beginning** of your correspondence to facilitate support staff screening and action on your request.

2. SUBMIT ANY ADDITIONAL EVIDENCE OR COMMENTS WITH THE REQUEST FOR REVIEW.

For internal review and association purposes, submitting all evidence at the same time would be very helpful.

3. IF YOU HAVE ADDITIONAL EVIDENCE, EXPLAIN HOW IT IS MATERIAL TO THE PERIOD AT ISSUE.

In regard to new evidence, the Appeals Council applies 20 CFR §§ 404.970 and 416.1470.

4. CONTENTIONS SHOULD BE SPECIFIC.

It is always a good practice to concisely focus your arguments for a reviewer. We recommend using 2,000 words or less if possible.

5. CONTENTIONS DO NOT NEED TO INCLUDE A RECITATION OF THE JURISDICTIONAL HISTORY OR EVIDENCE GENERALLY, UNLESS RELATED TO A SPECIFIC POINT OF CONTENTION.

The record is already before the Appeals Council.

6. CITE TO THE RECORD.

Include page numbers of exhibits.

7. DO NOT MAKE AUTOMATIC, MULTIPLE REQUESTS FOR THE STATUS OF A REQUEST FOR REVIEW.

You can verify that the Appeals Council has received the request through your local Social Security office, local hearing office or by calling our Congressional and Public Affairs Branch staff (1-703-605-8000) or our general inquiries staff at our toll-free telephone number (1-800-772-1213).

BE SPECIFIC IN REQUESTING AN EXTENSION OF TIME.

Requests for extension of time should explain how much additional time is needed and why the request should be granted.



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