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## I-5-1-17. Oral (Bench) Decision Procedures

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### I. Purpose and Applicability

This Temporary Instruction (TI) provides instructions to be followed for entering wholly favorable oral (bench) decisions at hearings held by administrative law judges (ALJs), and on the subsequent issuance of written decisions that incorporate by reference the findings and reasons stated at the hearing. The TI provides updated instructions which implement the interim final regulations that authorize ALJs, effective October 20, 2004, to use the incorporation-by-reference procedure in certain cases. This TI is to be followed by hearing offices (HOs) and ALJs who use this procedure. Oral decisions and the incorporation-by-reference procedure may be used only if all of the following criteria are present:

- The case is:
  - an initial adult disability case under Title II and/or Title XVI of the Social Security Act (the Act); or
  - a claim for disability benefits as a disabled widow, widower, or surviving divorced spouse under Title II of the Act; or
  - a claim for benefits by a child under age 18 under Title XVI of the Act.
- Drug addiction or alcoholism (DAA) is not an issue in the determination of disability.
- The ALJ decides at the hearing that a wholly favorable decision is warranted.
- There are no changes to the findings of fact or the rationale for the ALJ's decision between the time the oral decision is made at the hearing and the written decision is issued.

Claims of disabled adult children under Title II, “age-18 redeterminations” under Title XVI, continuing disability reviews, and closed period of disability cases including requested closed periods of disability are not included.

Sections [404.953\(b\)](#) and [416.953\(b\)](#) of our regulations provide that the incorporation-by-reference procedure may be used only in categories of cases that the Social Security Administration (SSA) identifies in advance. SSA has determined that this procedure may be used at this time only in adult disability claims (POD/DIB,

SSI, and DIB/SSI), disabled widow/widower/surviving spouse claims, and child SSI claims, not including DAA issues. If we decide to authorize hearing offices and ALJs to use the incorporation-by-reference procedure in additional categories of cases, we will issue additional instructions that will explain the additional categories of cases in which the procedure may be used.

## **II. Introduction**

Sections [205\(b\)\(1\)](#) and [1631\(c\)\(1\)](#) of the Act direct the Commissioner of Social Security to make findings of fact and decisions as to the rights of any individual applying for benefits. Pursuant to implementing regulations at [20 CFR §§ 404.953](#) and [416.1453](#), ALJs are required to issue written decisions that give the findings of fact and the reasons for the decision.

The regulations also provide an alternative procedure that an ALJ may use, in certain situations, to satisfy the requirement for issuing a written decision that gives the findings of fact and the reasons for the decision. Under the regulations, if an ALJ enters a wholly favorable oral decision into the record of a hearing and does not determine after the hearing that it is necessary to change the oral findings or rationale in any way, he or she may fulfill the regulatory requirement for issuing a written decision that incorporates by reference the findings of fact and the reasons stated orally at the hearing.

## **III. Operating Procedures**

### **A. Procedural Prerequisites**

An ALJ who chooses to make a wholly favorable oral decision at the hearing is required to include in the administrative record, as an exhibit entered into the record at the hearing, a prescribed checksheet document (see Attachment 1) that sets forth the key data, findings of fact, and narrative rationale for the decision. The ALJ will enter the checksheet as an exhibit in the record when the ALJ announces that a wholly favorable oral decision will be entered into the record. A decision is considered “wholly favorable” if a claimant and/or his/her representative, agrees in writing to a later onset date and that is the date that disability is established. After the hearing, the ALJ will issue a written notice of this oral decision that incorporates by reference the findings of fact and the reasons stated orally at the hearing. If an ALJ initiates completion of a checksheet in anticipation that an oral decision may be entered but decides not to enter an oral decision, the checksheet will become a working paper of the ALJ and it will not be entered into the record.

If the ALJ enters the checksheet document into evidence, and later decides to amend the oral decision that has been stated, or not to use the incorporation-by-reference procedure for any other reason, the document will remain part of the record. In these situations, the document can assist hearing office staff in preparing a decision when an oral decision is entered but the incorporation-by-reference procedure is not used. The document can also provide information needed by personnel who evaluate or implement ALJ decisions.

The ALJ may not use the incorporation-by-reference procedure if he or she determines after the hearing that any of the findings of fact or reasons for the decision entered into the record at the hearing must be changed. In such cases, the ALJ must issue a written decision that sets forth the findings of fact and the reasons for the decision under our existing procedures for issuing written decisions. The incorporation-by-reference procedure is precluded in such cases because it could be confusing for claimants and for personnel who must subsequently effectuate or review the ALJ's decision.

The ALJ is not required to use the incorporation-by-reference procedure when the criteria for using the procedure are satisfied. The ALJ retains the right to issue a written decision in the short-form or full-length format.

### **B. Announcing an Oral Decision**

In announcing that an oral decision will be entered into the record of a hearing, the ALJ will explain on the record that:

- The incorporation-by-reference procedure will not be used if the ALJ determines that any of the oral findings or reasons for the decision require change, or if the ALJ decides that the procedure should not be used for any other reason;
- If the incorporation-by-reference procedure is not used, the written decision will set forth the findings of fact and the reasons for the decision in writing using existing procedures, and discuss any changes in the findings and reasons as stated at the hearing; and
- The claimant and his or her representative (if any) will be given an opportunity to comment on any possible changes that would make the written decision that is to be issued less than wholly favorable, and if such changes are contemplated, the ALJ will proffer such changes and their supporting exhibits of record to the claimant or representative.

### C. Requirements for the Oral Decision

The ALJ must orally give the findings of fact and the reasons for the decision. Under [20 CFR §§ 404.953](#) and [416.1453](#), the findings and reasons given in the oral decision provide the only basis upon which the incorporation-by-reference procedure may be used to fulfill the requirement that an ALJ issue a written decision that gives the findings of fact and the reasons for the decision.

Oral decisions must also be audible and understandable. ALJs are encouraged to speak clearly and to enunciate when giving their oral decisions, so that the decision may be understood if subsequently audited by a claimant or an effectuating or reviewing component. The oral decision should be clearly delineated from the rest of the hearing.

The oral decision has three parts.

1. The first part of the oral decision must explain why the case is before the ALJ for a hearing and provide other relevant background information (i.e. procedural history), including the following:
  - A statement that the ALJ will not use the incorporation-by-reference procedures if he or she determines that any of the oral findings or reasons for the decision require change, or if the ALJ decides that the procedure should not be used for any other reason. Here is suggested language that may be used to meet this requirement:  
"You will receive a decision in writing. After entering this wholly favorable oral decision into the record of hearing, I may issue a written decision that incorporates the oral decision by reference. However, if I determine that it is necessary to change the oral findings or rationale in any way after today's hearing, I will not incorporate my oral decision by reference. If a change is necessary, I will issue a full-length written decision.
  - Specific information as to whether the claimant was represented at the hearing, the name of the representative (if any), whether the representative is charging a fee and whether an interpreter was used.
  - Identification of all witnesses.
  - A statement of the issue(s) to be resolved, framed as specifically as possible with appropriate reference to the applicable statute(s) and regulations.
2. The second part of the decision must provide findings that outline the relevant issues and explain the ALJ's rationale, as well as the ultimate conclusion, including the following, as applicable:
  - Findings on any pertinent threshold issues (e.g. insured status, age, literacy, dependency)

relationship).

- Findings on the alleged onset date (AOD) and established onset date (EOD).
- Reasons for reopening any prior determination(s) or decision(s).
- An assessment of the case using the sequential evaluation process including an explanation of the findings on each issue leading to the ultimate conclusion.
- A discussion of how the ALJ assessed the claimant's credibility and weighed opinion evidence from medical and other sources, including a discussion how the ALJ resolved conflicts in the evidence (e.g., conflicts between treating and nontreating source opinions, including a statement of which evidence is more persuasive and why).
- If the case is decided at the fifth and final step of the sequential evaluation process, recitation of the following statement or an equivalent statement, explicitly acknowledging the burden of providing evidence to show that the claimant can perform other work shifts to the Commissioner. Although the claimant generally continues to have the burden of proving disability at step five, a limited burden of going forward with the evidence shifts to the Social Security Administration. In order to support a finding that an individual is not disabled at this step, the Social Security Administration is responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy which the claimant can do, given the residual functional capacity, age, education, and work experience.
- The basis for finding the claimant disabled (e.g., direct application of a Medical Vocational Rule, framework of a Medical Vocational Rule, or framework, or the medical-vocational profiles in [20 CFR §§404.1562](#) and [416.962](#)). If the ALJ is relying on the testimony of (or interrogatories from) a medical or vocational expert in formulating the finding of disability, a statement indicating the same and the relevant testimony from the expert witness must be clearly articulated.
- Whether a representative payee is recommended.
- Whether a medical reexamination is recommended.
- Whether there is evidence of a Workers' Compensation Claim/Payment.
- Any other findings that are required by statute or regulation.

**NOTE:** The ALJ must refer to the pertinent regulations to ensure that all issues that must be resolved in each type of claim have been addressed.

3. The third part of the wholly favorable oral decision should provide the ALJ's ultimate conclusion in the case. This portion of the decision should be brief and to the point.

ALJs issuing oral decisions should be mindful of the following.

- The claimant should be able to understand the decision, particularly if the claimant does not have a representative.
- The ALJ should not cite medical texts or publications as authority to resolve any issue. If it is necessary to refer to a medical text or publication, the ALJ should submit the material to the claimant or representative for review and comment, make the material a part of the record, and issue a written decision.
- The ALJ should avoid the oral equivalent of boilerplate in the rationale.
- The ALJ should not use the decision as a forum for criticizing other government components, the courts, the representative, or the claimant.
- After the hearing, the ALJ should review the decision carefully and verify the accuracy of the

stated findings of fact and reasons for the decision. If any changes need to be made, the ALJ must issue a written decision instead.

#### **D. Findings Integrated Templates (FIT) Bench Decision**

The Findings Integrated Templates (FIT) Bench Decision is a computer template, integrated into the Document Generation System, which outlines the decisional shell for ALJs by adhering to the requirements for the oral decision as explained herein.

#### **E. The Checksheet Document**

An ALJ who wishes to issue an oral decision must complete a specialized checksheet, as set forth at Attachment 2. The document must be entered into the record as a procedural exhibit when the ALJ issues an oral decision. If at the end of the hearing the ALJ believes an oral decision is appropriate, he or she will enter the checksheet into the record at the hearing, and use it as a reference when he or she issues the decision. The ALJ must sign and date the checksheet document. However, this document does not substitute in any way for the oral decision and the subsequent written Notice of Decision. Two questions referencing fee agreement approval are optional and are included to facilitate the preparation of the Notice of Decision by HO staff. If the ALJ decides not to issue an oral decision, the checksheet document is not entered into the record, but instead becomes a working paper of the ALJ. If the ALJ decides to state an oral decision and enters the checksheet document into the record, the checksheet remains a part of the record even if the ALJ later decides not to use the incorporation-by-reference procedure.

The Checksheet can be completed manually by using the printable version found in Attachment 2 below. Alternatively, there is a FIT Bench Decision in the "Decision" folder in DGS. In the FIT checksheet, the user must complete a series of tabulated form fields, some of which populate data from CPMS. Once this is done, a completed checksheet document is generated.

#### **F. Proposed Checksheet Document Submitted by Claimant or Representative**

Claimants and representatives may voluntarily submit proposed checksheet documents of their own at the hearing. The ALJ may adopt and use a proposed checksheet if it is properly formatted (i.e., is in the format of the checksheet at Attachment 1), and if the proposed checksheet furnishes all of the information required by the checksheet at Attachment 1. Regardless of whether the ALJ issues an oral decision, a proposed checksheet document submitted by a claimant or representative should be entered into evidence. If the proposed document is properly formatted (including an area for the ALJ to sign and date the document), and the ALJ decides to use it as is or with changes, the ALJ must copy the proposed checksheet and sign and date the copy. The completed, signed copy of the proposed checksheet then becomes an exhibit and is used to prepare the decision, in the same way a checksheet document prepared by an ALJ. The original proposed checksheet document remains a separate exhibit in the record.

If the ALJ decides not to issue an oral decision, but concludes that the proposed checksheet document represents evidence that is material to the issues or proposed findings, rationale, or conclusions for consideration in the formulation of a written decision, the ALJ should enter the original proposed document into the record as a procedural exhibit. Any other copy of the proposed checksheet document, other than a checksheet submitted by a claimant or representative, becomes part of the ALJ's working papers and is not entered into the record.

#### **G. Changes to the Oral Decision**

When the ALJ decides that changes must be made to any of the findings of fact or the rationale of the oral

decision, a written decision incorporating the oral decision by reference may not be issued. In such cases, the ALJ must use either the short-form or long-form decisional templates to write the decision; a decision incorporated into the Notice of Decision is not acceptable. The written decision will explain that it changes some (or all) of the oral decision announced at the hearing and discuss any changes in the findings of fact and reasons for the decision entered into the record during the hearing.

#### IV. Notice of Decision

When the ALJ enters a wholly favorable oral decision that conforms to the requirements of Part III, and no changes to the oral findings and rationale are required, the Notice of Decision must include, as integral part of the notice, a written decision that incorporates by reference the findings of fact and rationale that the ALJ orally stated at the hearing. See Attachment 1. Because the written decision is an integral part of the notice, the ALJ must sign and date the Notice of Decision when the incorporation-by-reference procedure is used.

#### V. Request for Record of Oral Decision

A record of the ALJ's oral decision must be made available to claimants and representatives upon request. Under the regulations, we may provide the record in the form of a typed transcript, a tape recording, or a compact disc of a digital recording. When technically possible, we will also be able to provide a record of the oral decision as an electronically propagated digital recording. This means that digital recordings of bench decisions should be stored electronically, if the initial claim was established in the Electronic Disability Collect System.

The Notice of Decision advises the claimant of the right to request a record of the oral decision. Currently, a HO that receives a request for a record of the oral decision after the claims folder is released from the HO should forward the request to:

Division of Program Support (DPS)  
Office of Appellate Operations  
Office of Disability Adjudication and Review  
5107 Leesburg Pike  
Falls Church, VA 22041-3255.

DPS will respond to the request. An HO may itself provide a requested record of the oral decision directly to the claimant or representative if the record is available or can be produced in the HO.

#### VI. Inquiries

HO personnel should direct any questions to their Regional Office. Regional Office personnel should contact the Division of Field Practices and Procedures Officer in the Office of the Chief Administrative Law Judge at (703) 605-8500.

#### Attachment 1.

Notice of Decision — Bench Decision	<b>SOCIAL SECURITY ADMINISTRATION</b>	
	Refer To: 111-11-1111	Office of Disability Adjudication and Review (LOCAL OFFICE FROM ACCESS) City, State Zip Code

Date:

Jane Q. Public  
Street Address  
City, State Zip Code

### **NOTICE OF DECISION — FULLY FAVORABLE**

I have made a fully favorable decision in your case. My decision is based on your (ENTER TITLE HERE (e.g., supplemental security income)) application(s) if concurrent filed on (ENTER APPLICATION DATE(S)). (If SSI is included as a claim type the following text will be generated: The component responsible for processing my decision must decide that you meet the non-medical requirements for Supplemental Security Income payments.)

I announced the basis for my decision at the hearing held on (hearing held date). I adopt here those findings of fact and reasons.

To summarize briefly, I found you disabled on (ENTER ESTABLISHED ONSET DATE FROM USER FORM) because of (ENTER IMPAIRMENT(S)) so severe that ((ENTER SELECTION FROM USER FORM) (1) your impairment(s) meet the requirements of one of the impairments listed in the Listing of Impairments, (2) your impairment(s) medically equal the requirements of one of the impairments listed in the Listing of Impairments, or (3) you are unable to perform any work existing in significant numbers in the national economy.)

If the claimant is unrepresented this paragraph will follow: If you want more information about my decision, you should file a written request for this information at any local Social Security office or a hearing office. Please include the Social Security number shown above on your request. If you ask for it, we will provide you with a record of my oral decision at the hearing.

If the claimant is represented this paragraph will follow: If you want more information about my decision, you or your representative should file a written request for this information at any local Social Security office or a hearing office. Please include the Social Security number shown above on your request. If you ask for it, we will provide you with a record of my oral decision at the hearing.

### **This Decision is Fully Favorable To You**

Another office will process the decision and send you a letter about your benefits. Your local Social Security office or another office may first ask you for more information. If you do not hear anything for 60 days, contact your local office.

### **The Appeals Council May Review The Decision On Its Own**

The Appeals Council may decide to review my decision even though you do not ask it to do so. To do that, the Council must mail you a notice about its review within 60 days from the date shown above. Review at the Council's own motion could make the decision less favorable or unfavorable to you.

### **If You Disagree With The Decision**

If you believe my decision is not fully favorable to you, or if you disagree with it for any reason, you may file an appeal with the Appeals Council.

### **How To File An Appeal**

To file an appeal you or your representative must request the Appeals Council to review the decision. You must make the request in writing. You may use our Request for Review form, HA-520, or write a letter.

You may file your request at any local Social Security office or a hearing office. You may also mail your request right to the Appeals Council, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Falls Church, VA 22041-3255. Please put the Social Security number shown above on any appeal you file.

### **Time To File An Appeal**

To file an appeal, you must file your request for review within 60 days from the date you get this notice.

The Appeals Council assumes you got the notice 5 days after the date shown above unless you show you did not get it within the 5-day period. The Council will dismiss a late request unless you show you had a good

reason for not filing it on time.

### Time To Submit New Evidence

You should submit any new evidence you wish to the Appeals Council to consider with your request for review.

### How An Appeal Works

Our regulations state the rules the Appeals Council applies to decide when and how to review a case. These rules appear in the Code of Federal Regulations, Title 20, Chapter III, Part 404 (Subpart J) and Part 416 (Subpart N).

If you file an appeal, the Council will consider all of my decision, even the parts with which you agree. The Council may review your case for any reason. It will review your case if one of the reasons for review listed in our regulations exists. Section [404.970](#) and [416.1470](#) of the regulation list these reasons.

Requesting review places the entire record of your case before the Council. Review can make any part of my decision more or less favorable or unfavorable to you.

On review, the Council may itself consider the issues and decide your case. The Council may also send it back to an Administrative Law Judge for a new decision.

### If No Appeal And No Appeals Council Review

If you do not appeal and the Council does not review my decision on its own motion, you will not have a right to court review. My decision will be a final decision that can be changed only under special rules.

### If You Have Any Questions

If you have any questions, you may call, write or visit any Social Security office. If you visit an office, please bring this notice and decision with you. The telephone number of the local office that serves your area is (555) 555-1212. Its address is Street Address, City, State Zip Code.

NAME OF JUDGE

Administrative Law Judge

cc: Representative's Name

Street Address

City, State Zip Code

## [Attachment 2. ALJ Bench Decision Checksheet – Print Version](#)

[Printable PDF Version of Checksheet](#)

### (Attachment 2)

### ALJ Bench Decision Checksheet – Print Version

Claimant Name: \_\_\_\_\_

SSN: \_\_\_\_\_

DIB Application Date: \_\_\_\_\_

Hearing Date: \_\_\_\_\_

SSI Application Date: \_\_\_\_\_

DWB Application Date: \_\_\_\_\_

Date Last Insured:

Established Onset Date: \_\_\_\_\_

EOD is  AOD  **Amended AOD**  **Current Appl. Date (SSI Only)**  **Prior Appl. Date (SSI Only)**

EOD w/in Widow/Widower prescribed period

Prior Application

Reopened

Not Reopened

Prior Application Date(s): T2 \_\_\_\_\_

T16 \_\_\_\_\_

\_\_\_\_\_



**Function by Function:****Rationale for Decision (Include Assessment of Credibility and Medical Opinions):** **Claimant has PRW w/ Job Title(s):**

**Claimant is unable to perform PRW as actually or normally performed** based on VE testimony

PRW was  unskilled  skilled/semiskilled

**Claimant "disabled" based on:**

**Direct application of Medical-Vocational Rule #** \_\_\_\_\_

**Framework of Medical-Vocational Rule #** \_\_\_\_\_

based on VE testimony  based on SSR# \_\_\_\_\_

**Section 204.00 Framework**  based on VE testimony  based on SSR# \_\_\_\_\_

 **Recommend Representative Payee**

**Medical reexamination in** \_\_\_\_\_ **Months**

**Evidence of Workers Compensation Claim/Payment**

**Fee Agreement Approved-Representative Name:**

**Fee Agreement Denied-Reason:**

ALJ: \_\_\_\_\_ DATE: \_\_\_\_\_

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