

## Social Security

**HALLEX**

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### I-2-6-58. Admitting Evidence into the Record

Last Update: 8/2/16 ([Transmittal I-2-185](#))

#### A. General

The administrative law judge (ALJ) will generally admit into the record any information he or she determines is material to the issues in the case. Information is material if it is relevant, i.e., involves or is directly related to issues being adjudicated. For unique considerations in Region 1, see subsection E below.

The following are examples of information that may be material to a claim for disability:

- Evidence of work activity in the last 15 years;
- Evidence of the existence of a severe impairment;
- Evidence dated within 12 months of the alleged onset date under a title II application for disability insurance benefits;
- Evidence dated on or after the application date or protective filing date of a title XVI application claiming disability; and
- Evidence dated within a time-period covered by a prior application that may be subject to reopening. For reopening instructions, see Hearings, Appeals and Litigation Law (HALLEX) manual [I-2-9-20](#).

While hearing office (HO) staff initially marks and lists proposed exhibits (see HALLEX [I-2-1-15](#) and [I-2-1-20](#)), the ALJ makes the final decision on the information admitted into the record. The ALJ may admit information into the record, even if it would not be admissible in court under the rules of evidence. When the ALJ does not admit information into the record that would normally be exhibited under other circumstances (see HALLEX [I-2-1-15](#)), the ALJ will identify the information and explain the reason for not admitting the information. The ALJ can provide these reasons on the record at the hearing, in a written ruling that the ALJ exhibits, or in the ALJ's decision.

**NOTE 1:** The ALJ does not need to explain why information was not admitted into the record if the information is merely duplicative of evidence already in the record. Rather, the ALJ will ensure duplicative evidence is clearly identified as such in the claim(s) file.

**NOTE 2:** If the information is received post-hearing, see HALLEX [I-2-7-35](#).

#### B. Prior ALJ Decision

If there was a prior ALJ decision, the ALJ must associate the prior ALJ decision with the current claim(s) file. This action is especially critical to comply with the following Acquiescence Rulings (AR):

- Fourth Circuit (Maryland, North Carolina, South Carolina, Virginia, West Virginia)- [AR 00-1\(4\)](#): *Albright v. Commissioner of the Social Security Administration*, 174 F.3d 473 (4th Cir. 1999) (Interpreting *Lively v. Secretary of Health and Human Services*)- Effect of Prior Disability Findings on Adjudication of a Subsequent Disability Claim- Titles II and XVI of the Social Security Act.
- Sixth Circuit (Kentucky, Michigan, Ohio, Tennessee)- [AR 98-3\(6\)](#): *Dennard v. Secretary of Health and Human Services*, 907 F.2d 598 (6th Cir. 1990) — Effect of A Prior Finding of the Demands of Past Work on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act — Titles II and XVI of the Social Security Act, and [98-4\(6\)](#): *Drummond v. Commissioner of Social Security*, 126 F.3d 837 (6th Cir. 1997) - Effect of Prior Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act - Titles II and XVI of the Social Security Act.
- Ninth Circuit (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington)- [AR 97-4\(9\)](#): *Chavez v. Bowen*, 844 F.2d 691 (9th Cir. 1988) — Effect of a Prior Final Decision That a Claimant is Not Disabled, And of Findings Contained Therein, On Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act — Titles II and XVI of the Social Security Act.

For information about how an ALJ determines what evidence to include from a prior file and whether to exhibit the information, see HALLEX [I-2-1-13](#).

### **C. Admitting Evidence**

Before taking any testimony, the ALJ will make the proposed exhibits a part of the record by:

- Asking the claimant (or appointed representative, if any) whether he or she had an opportunity to examine the proposed exhibits;
- Asking the claimant (or appointed representative, if any) if there are any objections to admitting the proposed exhibits into the record; and
- Ruling on any objections to the proposed exhibits.

Whenever possible, the ALJ will rule on objections on the record during the hearing. However, if circumstances warrant a ruling on an objection in writing, the ALJ may decide the objections in an independent document or as part of the written decision issued by the ALJ. If the ALJ issues the ruling in an independent document, the ALJ will exhibit the document and mail a copy to the claimant and appointed representative, if any.

### **D. Written Evidence Submitted at the Hearing**

The ALJ may admit additional written evidence into the record during the hearing. However, before admitting any proposed exhibit into the record during the hearing, the ALJ will identify the proposed exhibit and offer the claimant the opportunity to inspect the proposed exhibit and offer any objections or comments. If the ALJ plans to admit additional written evidence into the record after the hearing, or if the claimant submits evidence after the hearing, see generally the instructions regarding proffer in HALLEX [I-2-7](#).

### **E. Part 405- Closed Record Provision in Region 1**

In Region 1, rules in Part 405 of the regulations apply to the submission of evidence. Under [20 CFR 405.331](#), the claimant must submit any written evidence no later than five business days before the date of the scheduled hearing. An ALJ gives the claimant notice of this requirement in the notice of hearing.

#### **1. Considering Additional Evidence Not Submitted Prior to 5 Days Before the Hearing**

If the claimant wants to submit evidence less than five days before the hearing or at the hearing, the ALJ will accept the evidence if the claimant shows that:

- Agency action misled the claimant;
- The claimant has a physical, mental, educational, or linguistic limitation(s) that prevented him or her from submitting the evidence earlier; or
- Some other unusual, unexpected, or unavoidable circumstances beyond the claimant's control prevented him or her from submitting the evidence earlier.

If the claimant wants to submit evidence after the hearing but before the hearing decision is issued, the ALJ will accept the evidence if the claimant shows that there is a reasonable possibility that the evidence, alone or when considered with the other evidence of record, affects the outcome of the case and:

- Agency action misled the claimant;
- The claimant has a physical, mental, educational, or linguistic limitation(s) that prevented him or her from submitting the evidence earlier; or
- Some other unusual, unexpected, or unavoidable circumstances beyond the claimant's control prevented him or her from submitting the evidence earlier.

If the claimant submits evidence after the hearing decision is issued, the ALJ will forward the information to the Appeals Council if the claimant submitted a request for review of the ALJ's decision. If the claimant has not requested review by the Appeals Council, the ALJ may either:

- Consider revising his or her decision if the claimant shows a reasonable possibility that the evidence, alone or when considered with the other evidence of record, affects the outcome of the case (and was not submitted earlier for one of the reasons previously noted); or
- Return the evidence to the claimant noting in writing that the record is closed, but the claimant may request review by the Appeals Council.

## 2. Exhibiting and Decision Writing Considerations

If an ALJ accepts evidence submitted after the record closes (i.e., evidence submitted after five business days before the hearing), per the instructions in E.1. above, the ALJ will exhibit the information. The ALJ may, but is not required to, address in the decision why he or she considered the information.

However, if an ALJ does not accept information submitted after the record is closed, the ALJ will not exhibit the information. The ALJ will briefly explain in the text of the decision that:

- Additional evidence was submitted (specifically identifying the evidence, usually by source, date, and number of pages);
- The claimant did not establish a reason under [20 CFR 405.331](#) for not submitting it within the required timeframes (addressing any specific reason raised by the claimant);
- The claimant did not show that there is a reasonable possibility that the evidence, alone or when considered with the other evidence of record, affects the outcome of the case (addressing any specific argument raised by the claimant); and
- Therefore, the ALJ declined to consider the information under [20 CFR 405.331](#).

**NOTE:** If the claimant submits additional evidence to the Appeals Council, and the Appeals Council remands the case for “new and material evidence related to the period at issue,” an ALJ should request clarification of the remand order if it appears the Appeals Council applied Part 404 or 416 procedures rather than Part 405 procedures. For instructions on how to request clarification on a remand order, see HALLEX [I-2-1-85](#).



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