



## I-2-8-18. Administrative Law Judge Decisions in Court Remand Cases

Last Update: 6/16/06 ([Transmittal I-2-69](#))

### A. General

If a court remands a case to the Commissioner of Social Security, and the Appeals Council subsequently remands the case to an ALJ for further proceedings and a new decision, the Appeals Council will generally vacate the final decision of the Commissioner that the court remanded. When the Appeals Council vacates a final decision of the Commissioner, the ALJ must consider all pertinent issues *de novo*. For initial entitlement cases, vacating a final decision reactivates the application. Accordingly, the ALJ must decide the remanded issues through the date of the new hearing decision or through the date that insured status expired, because the prospective life of the application will continue until the ALJ issues a final decision following the court remand.

Although the ALJ issues a final decision in court remand cases, the Appeals Council retains the authority to assume jurisdiction of the case. If the Appeals Council assumes jurisdiction, it may affirm, modify, or reverse an ALJ's decision. The Appeals Council's decision then becomes the final decision of the Commissioner after remand. The Appeals Council may also remand the case to an ALJ for further proceedings.

If the claimant files written exceptions and the Appeals Council concludes that there is no reason to change the ALJ's decision, the Appeals Council will issue a notice to the claimant explaining why it has declined to assume jurisdiction and notifying the claimant that the ALJ's decision is the final decision of the Commissioner after remand.

Ordinarily, upon remand from the court and the Appeals Council, the ALJ will hold a hearing and issue a new decision. That decision will become the final decision of the Commissioner after remand unless:

1. within 30 days after receipt of the ALJ decision (or within such time as allowed by the Appeals Council in response to a timely request for an extension of time), the claimant submits written exceptions to the Appeals Council objecting to the ALJ's decision and based on these exceptions the Appeals Council assumes jurisdiction of the case;
2. the Appeals Council assumes jurisdiction of the case under its own motion authority within 60 days after the ALJ's decision; or
3. the ALJ issues a recommended decision, in which case the Appeals Council will issue the final decision of the Commissioner.

When a court remands a case, sections [205\(g\)](#) and [1631\(c\)](#) of the Act require the Commissioner to modify or affirm the prior findings of fact or decision. The statute precludes dismissal of a sentence six remand in a court remand case; however, the ALJ may dismiss a sentence four remand. See [I-2-4-5.A.7.](#), [Dismissing a Request for Hearing](#).

If the claimant fails to appear for the hearing and does not establish good cause for such failure, or asks to withdraw from the claim, the ALJ must issue a decision which documents the facts of the abandonment or withdrawal and the effect the claimant's action has on the proceedings. The decision in such a case must contain the following:

- a statement of the procedural history on remand from the court;
- a discussion of the facts surrounding the conclusion that the claimant has either abandoned or withdrawn the claim (See [I-2-4-25](#), [Dismissal Due to Claimant's Failure to Appear](#) or see [I-2-4-20 A.](#), [Claimant Voluntarily Withdraws Request for Hearing](#), respectively);
- a discussion of the supporting documents entered in the record (i.e., notices sent to the claimant, attempts to contact the claimant and/or the representative, and the claimant's statements, if any);
- an explanation that the claimant's action renders the controversy moot, thereby making additional administrative

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proceedings unnecessary;

- a statement adopting the prior final decision of the Commissioner, as modified. (See [I-2-8-97](#), Exhibit)

**NOTE:** The ALJ will not follow the above procedure if the court has held that the claimant is in fact disabled and has remanded the case to the Commissioner to determine the onset of disability or if the ALJ determines that the claimant's appearance is not necessary to issue a favorable decision. In such a case, the ALJ will develop the record and comply with the court's order.

## B. Hearing Office Action

### 1. Court Remand Case Flag

The Court Case Preparation and Review Branches (CCPRBs) in the Office of Disability Adjudication and Review (ODAR) Headquarters process cases which the Appeals Council receives from the court on remand. When the Appeals Council remands a court case to an ALJ, the CCPRB attaches a pink court remand flag to the claim file (CF) if the CF is available, or attaches it to the certified record if the CF is not available, and completes items 1-4 of the flag. (See [I-2-8-90](#) Exhibit - COURT REMAND CASE FLAG.) When the CF is not available and the CCPRB sends only the flagged certified record to the HO, the HO must remove the flag from the certified record and attach it to the CF when they subsequently receive it. The Office of Appellate Operations (OAO) in ODAR Headquarters processes final and recommended ALJ decisions in court remand cases. If the Appeals Council has remanded a court case to an ALJ, the ALJ has issued a decision, and the Appeals Council decides it is necessary to remand the case to an ALJ a second time, OAO will complete items 1-4 of a court remand flag and attach the flag to the CF.

### 2. Priority Processing of Court Remands

**HOs must give priority to court remand cases.**

#### a. Time-Limited Court Remand Case — Highest Priority

In time-limited court remands, the court orders the Commissioner to complete specific actions within a set period of time. HOs must give these cases the highest priority in processing.

#### b. Delayed Court Remand Case — Second Highest Priority

A delayed court remand case is one which is over 125 days old counting from the date of the court's order, or one which the Appeals Council remands to an ALJ a second time. HOs must give these cases the second highest priority.

#### c. Other Court Remand Cases — Third Highest Priority

HOs must process all other court remands as expeditiously as possible.

### 3. Initial HO Staff Actions Upon Receipt of Court Remand Case

- Identify court remand by the pink court remand flag. (See [I-2-8-90](#) Exhibit - COURT REMAND CASE FLAG.)
- Enter case into the Case Processing Management System (CPMS) and into Case Control System (CCS).
- Establish a 20-day diary for receipt of the CF, if necessary.
- Call the appropriate CCPRB at the telephone number on the route slip if the claim file does not arrive within 20 days.
- Refer the court remand case to the Group Supervisor (GS) or to the HOD for an analysis of the order.

### 4. Assignment of Court Remand Cases

The HO Chief ALJ (HOCALJ) will assign the case to the ALJ who issued the hearing decision unless:

- The court or Appeals Council directed that the case be assigned to a different ALJ; or
- The HOCALJ, with the concurrence of the Regional Chief ALJ (RCALJ), assigns the case to a different ALJ because:
  - the ALJ who issued the prior decision has an excessive workload, and will not be able to hear and decide the case to meet a court imposed time limit, if any, or meet established processing time goals for court remand cases; or
  - another ALJ is scheduled to visit the area where the claimant resides before the ALJ who issued the original decision and will be able to hold a hearing sooner; or

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3. the ALJ who issued the prior hearing decision has left ODAR or is unavailable because of illness, leave or other prolonged absence from the HO.

When 4.b.(1) or 4.b.(3) applies, the HOCALJ will assign the court remand case to an ALJ in rotation.

## 5. Processing Time-Limited and Delayed Court Remand Cases

- a. The master docket clerk will refer time-limited and delayed court remand cases to the GS or HOD immediately after they are logged in.
- b. The GS or the HOD will:
  1. Review the order.
  2. Obtain any missing documents; e.g., additional evidence which was the basis for the remand, a magistrate's report, or documents from the claimant, representative, or the Office of the General Counsel (OGC). The GS or the HOD will request the missing document(s) from the source best able to provide it quickly.
  3. Estimate if the HO can process the case within any time limit the court established, and if not, follow the procedures in [I-2-8-18 B.6.](#) below.
  4. Set up a control and designate the priority of the case.
  5. Within 2 working days of receiving the case prepare an analysis of the court order, the Appeals Council order and the facts of the case. Include in the analysis:
    - a. Actions the court ordered or the Appeals Council mandated;
    - b. Any problem such as a pending motion for contempt of court;
    - c. Any special circumstances which require special handling; e.g., travel to a remote site which may affect the HOCALJ's assignment of the case; and
    - d. An estimate as to whether the HO can process the case within any court specified time limit. (See [I-2-8-18 B.6.](#) below if the HO needs an extension of time).
  6. Give the analysis and files to the HOCALJ for assignment to an ALJ.

## 6. Extension of Time

The CCPRB will request that the appropriate OGC Social Security Division attorney seek an extension of time if the court-imposed time limit has expired or will expire within 14 days of the date the CCPRB releases the remanded case to the HO.

If the time limit has expired or will expire within 14 days of the date the HO receives the remand, check the folder to determine if the CCPRB requested an extension. If the CCPRB did not request an extension of time, the GS or HOD, acting on behalf of the ALJ, must notify OGC that the ALJ needs an extension.

In all other court-imposed time-limited cases, if the HO cannot meet the time limit, the GS or HOD must request the extension as soon as the need is apparent, but at least 14 days before the due date specified in the court's remand order.

The GS or HOD must inform the ALJ assigned to the case and the Regional Office that he or she requested an extension.

## 7. Tracking Time-Limited Court Remand Cases

Each Regional Office establishes procedures to obtain status reports from the HOs and notifies the HOs of any problems that develop; e.g., the Regional Office becomes aware that the plaintiff (or claimant) is threatening to file a motion to hold the Commissioner in contempt of court.

## 8. Developing and Scheduling Hearings on Court Remand Cases

- a. Develop a court remand case in the same manner as a non-court case except that a court remand case has priority.
- b. Schedule a court remand case in the same manner as a non-court case except that a court remand case has priority.
- c. Enter on the Notice of Hearing the issues the ALJ will consider.
  - Identify and enter the issue(s) raised in the court and Appeals Council order.
  - Enter any new issues not raised in either the court or Appeals Council order.

## 9. Decisional Paragraphs and Notices

### a. Final Decisions

- Use the current standardized paragraphs for court cases.
- Use form HA-L5022-U6 as the cover notice.

## 10. Routing and Release Procedures

### a. Court Remand Flag

The GS or HOD completes items 5-7b. of the flag. (See [I-2-8-90](#) Exhibit - COURT REMAND CASE FLAG.)

### b. Transmittal Slip HA-L48

1. The case disposition data in items 5-7b. of the flag determine routing. (See [I-2-8-94](#), Exhibit - COURT REMAND CASE ROUTING.)
2. Once case disposition data are entered into the Case Processing Management System (CPMS), the system sends prompts related to case routing and preparation of a transmittal/routing sheet (i.e., Form HA-L48, (Transmittal by Office of Disability Adjudication and Review)).
3. Print the HA-L48 at the same time the decision is printed.
4. If manual preparation of the HA-L48 is necessary:
  - Follow the case routing instructions in [I-2-8-94](#) Exhibit - COURT REMAND CASE ROUTING. Refer to [I-4-3-116](#) for destination codes and addresses of effectuating components.
  - Instruct the effectuating component to forward the CF to OAO after it effectuates the decision if the ALJ issued a partially favorable decision.

## 11. Release of the Case

Verify that the transmittal slip HA-L48 has been correctly addressed by comparing the address with information on the flag. ([I-2-8-90](#) Exhibit - COURT REMAND CASE FLAG, and [I-2-8-94](#) Exhibit - COURT REMAND CASE ROUTING.)

### a. Release of a Partially Favorable Decision

1. If the CF is in the HO:
  - a. Send the CF(s) and all material related to the proceedings on remand to the effectuating component(s). Follow the non-court case instructions on dividing the cases when the ALJ issues a single decision involving two or more claims.

**NOTE:** The HO will instruct the effectuating component(s) to forward the CF(s) to the appropriate CCPRB immediately after effectuation.

- b. Return the certified record to OAO with a copy of the decision and hearing cassette(s) or CD(s) to OAO at:  
Office of Disability Adjudication and Review, SSA  
Office of Appellate Operations  
Attn: CCPRB \_\_\_\_\_ [appropriate number]  
5107 Leesburg Pike  
Falls Church, VA 22041-3255
2. If the CF is not in the HO:
  - a. Send the prior certified administrative record and all material related to the proceedings on remand to the effectuating component.
  - b. Send a copy of the partially favorable decision and hearing cassette(s) or CD(s) to OAO at the address in 1.b. above.

### b. Release of a Fully Favorable Decision

1. Send the CF(s), certified administrative record, and all material relating to the proceedings on remand to the

effectuating component. Follow the non-court case instructions on dividing the cases when the ALJ issues a single decision involving two or more claims.

2. Send a copy of the fully favorable decision to the regional Office of the General Counsel.
3. Prepare the hearing cassette(s) or CD(s) for mailing, following the procedures in [I-2-8-50 B](#).

### c. Release of an Unfavorable Decision

Send the CF, hearing cassette(s) or CD(s), and the certified record to OAO at the above address. **DO NOT SPLIT THE FILES WHEN THERE IS MORE THAN ONE CLAIM.**

## C. Representative Fees

### 1. Jurisdiction (See [I-1-2-6](#), [Delegation of Authority to Authorize Fees](#), [I-1-2-13 Authority to Approve Fee Agreement](#) and [I-1-2-52 Authority to Approve Fee Petition](#).)

- a. Office of Appellate Operations (OAO): The Attorney Fee Officer in OAO has jurisdiction to authorize a fee when the Appeals Council issues a final decision following an ALJ recommended decision or the Appeals Council assumes jurisdiction of an ALJ decision.
- b. Administrative Law Judge or Regional Chief Administrative Law Judge (RCALJ): The ALJ who issued the decision which became the final decision of the Commissioner after remand has jurisdiction to authorize a fee up to and including \$10,000, or recommend that the RCALJ authorize a fee in excess of that amount. The ALJ also has the authority to disapprove a fee agreement if the fee agreement does not comport with the regulations. See [I-1-2-13](#).
- c. Office of the General Counsel (OGC): OGC has jurisdiction to process requests under the Equal Access to Justice Act (EAJA). (See [I-1-2-91](#), Equal Access to Justice Act.)

### 2. Services Considered

In setting the fee, do not consider services performed before the court. (See [20 CFR §§ 404.1728\(a\)](#) and [416.1528](#), and [I-1-2-57](#), Evaluating Fee Petitions.)

### 3. Distribution of Fee Authorization Forms

- a. Distribute the fee authorization, Form SSA-1560A-U5, in the same manner as for a non-court case; and
- b. Send a copy of the fee authorization, Form SSA-1560A-U5, to:

Office of the General Counsel  
Room 639, Altmeyer Building  
6401 Security Boulevard  
Baltimore, Maryland 21235

OGC requests that ODAR send the copies of the fee authorizations in batches. Regional and Hearing Offices in Regions 1, 2, 3, and 4 must forward copies of fee authorization forms to OGC on the first work day after the 15th of every month. Regional and Hearing Offices in all other Regions must forward copies of fee authorization forms to OGC on the first work day of every month.



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