

Regulatory Provisions

We have added new §§ 404.942 and 416.1442 to our regulations to authorize attorney advisors in OHA to conduct certain prehearing proceedings and, where appropriate, make decisions based on the documentary record that are wholly favorable to the parties to the hearing. Our purpose in issuing these rules is to expedite the processing of cases pending at OHA without infringing on a claimant's right to a hearing before an ALJ.

The authority of an attorney advisor to conduct prehearing proceedings and to make wholly favorable decisions under these final rules is temporary, and applies only in the limited circumstances described below. Also, the attorney advisor's conduct of certain prehearing proceedings will not delay the scheduling of a hearing before an ALJ. If the prehearing proceedings are not concluded before the hearing date, the case will be sent to the ALJ unless a decision wholly favorable to the claimant and all other parties is in process, or the claimant and all other parties to the hearing agree in writing to delay the hearing until the prehearing proceedings are completed.

Prehearing proceedings may be conducted by the attorney advisor under this rule if new and material evidence is submitted; there is an indication that additional evidence is available; there is a change in the law or regulations; or there is an error in the file or some other indication that a wholly favorable decision may be issued. A decision by an attorney advisor will be mailed to all parties. The notice of decision will state the basis for the decision and advise the parties that an ALJ will dismiss the hearing request unless a request to proceed with the hearing is made by a party within 30 days after the date the notice of the decision is mailed.

We believe that these temporary procedures will enable us to manage our pending hearing requests in a more timely manner. They also may provide information that can help us better identify cases that can be decided without a hearing before an ALJ and improve our ability to narrow the issues that must be resolved before a decision can be made.

The attorney advisor's functions are not designed to change in any significant way the overall rate at which we allow claims for benefits when an individual requests a hearing before an ALJ. In order to assure that no unacceptable change in the overall allowance rate occurs, the Commissioner of Social Security will review management and quality

assurance information on an ongoing basis. If there is evidence that the overall allowance rate increases or decreases unacceptably, the Commissioner will curtail use of, or make appropriate adjustments to the attorney advisor procedures, consistent with this regulatory authority.

We find good cause for dispensing in this case with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, and in the notice of proposed rulemaking (NPRM), the number of hearing requests pending at OHA has reached unprecedented levels. In light of the record number of pending hearing requests, the importance we place on ensuring that we adjudicate claims timely and accurately, and the beneficial effect we expect these final rules to have on our ability to provide better service to claimants, we find that it is in the public interest to make these final rules effective upon publication.

Public Comments

These regulatory provisions were published in the **Federal Register** as an NPRM on April 14, 1995 (60 FR 19008). We provided interested parties with a 30 day comment period. We received 82 letters representing the views of over 125 individuals. Most of the comments we received were from individuals employed either as attorney advisors or ALJs in OHA. However, we also received comments from a variety of other sources, including private citizens, claimant representatives, State agencies which make disability determinations for us, and union representatives. After carefully considering the comments received, we have decided to adopt the proposed rule essentially without change.

In general, the comments either strongly supported or strongly opposed adoption of the proposed rule. Only a few of the comments were in any way equivocal, and even these can be properly categorized as either basically supporting or opposing the proposed rule.

Almost all of the comments supporting adoption of the proposed rule did so without recommending changes. While the comments which recommended against adoption of the proposed rule more frequently suggested changes, the changes suggested were generally so substantive that they effectively constituted expressions of disagreement with the concept of the rule as proposed, rather than proposals to change the rule to make it function more effectively. Some of the comments we received were outside the scope of the proposed rule,

and therefore have not been addressed. The substantive comments made by the commenters and our responses are summarized below. Because some of the comments were detailed, we had to condense, summarize or paraphrase them. We have, however, tried to summarize the commenters views accurately and to respond to all of the significant issues raised by the commenters.

The comments from individuals employed as attorney advisors unanimously supported adoption of the proposed rule; all but one of the comments from individuals employed as ALJs recommended against adoption of the proposed rule. Most of the remaining comments, including most of those received from private citizens, claimant representatives, and union representatives, supported adoption of the proposed rule.

The comments supporting the adoption of the proposed rule generally did so based on the view that the contemplated changes would result in quicker, more cost-effective service to the public. We agree with these comments; our intent in these final rules is to enhance our ability to decide cases more quickly during the period in which these rules will be effective and, therefore, to improve the level of service we provide to claimants.

The comments from individuals who supported adoption of the proposed rule also stressed the serious detrimental effects the number of pending claims has on both claimants and our hearing offices. These comments also stressed that making fuller use of the experience and expertise of the attorney advisors in OHA constitutes the most effective way that SSA can promptly apply existing resources to process the number of cases pending at OHA in the most expeditious manner. We also agree with these comments.

A number of the commenters who supported adoption of the proposed rule also indicated that the procedures described in the proposed rule should be viewed as a logical and natural extension of the prehearing conference program OHA has already successfully conducted under existing regulatory authority. Many of these comments stressed the importance of the procedures contained in these final rules in preserving the time and skill of the ALJs for use in cases that cannot be decided without a hearing. These comments further noted that the proposed rule would provide the ALJ with the benefit of a better developed record in cases in which an ALJ held a hearing. We concur in these comments.