

*Comment:* One commenter recommended that SSA should adopt procedures to ensure that the ALJ does not know if review by an attorney advisor has occurred.

*Response:* We have not adopted this comment. We do not believe such procedures could be devised or that they are required. ALJs are typically aware that another adjudicator has not made a wholly favorable determination or decision in a specific case. It has not been our experience that such knowledge compromises the ability of ALJs to hold hearings and decide cases in a fair, impartial manner. We believe that the attorney advisor's performance of the functions authorized by these final rules does not materially affect the ability of our ALJs to hold hearings and make decisions fairly and impartially.

*Comment:* One commenter suggested that part 422 of 20 C.F.R. may need to be amended to give the attorney advisors decisionmaking authority.

*Response:* We disagree with this comment. We do not believe that giving attorney advisors the temporary decisionmaking authority provided in new §§ 404.942 and 416.1442 of our regulations requires amendment of part 422. The applicable regulations in part 422, §§ 422.130 and 422.203, generally describe either our overall claims adjudication process (§ 422.130) or procedures followed by OHA (§ 422.203). However, § 422.201 explicitly refers to the regulations in §§ 404.929 through 404.983 of this chapter and §§ 416.1429 through 416.1483 of this chapter for "detailed provisions related to" the hearings process. The regulations in part 422, therefore, are intended only to describe in general terms the overall procedures followed by OHA. They are not intended to describe each provision contained in the applicable regulations of subpart J of part 404 of this chapter or subpart N of part 416 of this chapter. Consequently, we do not believe that we need to amend any provision of part 422 of this chapter to refer specifically to the provisions of these final rules.

*Comment:* One commenter stated that the proposed rule should be clarified to establish that attorney advisors would be able to make fully favorable decisions in claims involving drug addiction and alcoholism where the claimant agrees that drug addiction and/or alcoholism is a contributing factor material to the finding of disability.

*Response:* The final rules give attorney advisors authority to make decisions which are wholly favorable to the claimant and all other parties in cases in which a claimant has filed a claim for benefits based on disability

under title II and/or title XVI. For the purposes of new §§ 404.942 and 416.1442, a "wholly favorable" decision is intended to have the same definition as it is under the current regulations that authorize ALJs to make such a decision, §§ 404.948 and 416.1448. A wholly favorable decision is a decision that makes a finding in favor of the claimant and all the parties on every issue. Criteria for determining if any particular decision is wholly favorable would not be appropriately included in §§ 404.942 and 416.1442. However, we expect that this issue will be addressed in the instructions we plan to issue to implement these final rules.

*Comment:* Two commenters suggested extending the provisions of the proposed rule to include other categories of claims, including claims arising under the Old Age and Survivors program under title II of the Act and claims adjudicated by OHA on behalf of the Health Care Financing Administration under Parts A and B of the Medicare program under title XVIII of the Act.

*Response:* The overwhelming majority of cases pending at OHA involve claims for benefits based on disability. For the purposes of this short term initiative, we decided that it would be best to focus these final rules on increasing the efficiency with which we can process the largest group of pending cases. Cases involving other types of claims, however, will benefit from the general increase in efficiency at OHA resulting from implementation of these rules.

*Comment:* One comment expressed the view that §§ 404.957 and 416.1457 of subparts J and N of parts 404 and 416 of our regulations should be amended to specify that a claimant's agreement to postpone a hearing will constitute good cause for a failure to appear at a scheduled hearing.

*Response:* This comment assumes that a case will have been assigned to an ALJ before an attorney advisor conducts prehearing proceedings under the authority contained in these rules. As discussed above, however, that is not our intent. The prehearing proceedings conducted under these provisions will not delay the scheduling of a hearing because those proceedings will be conducted before the case would be scheduled for a hearing, considering the number of cases awaiting hearings and our general practice of scheduling hearings according to the request for hearing date. The provisions concerning claimant agreement to delay the hearing would apply if the prehearing proceedings can not be completed before the case is ready to be scheduled for a hearing.

*Comment:* Two commenters also recommended that §§ 404.957 and 416.1457 of our regulations be revised to clarify that an ALJ may dismiss a request for hearing when an attorney advisor issues a wholly favorable decision under §§ 404.942 or 416.1442.

*Response:* An ALJ's authority to dismiss a request for hearing under the circumstances set forth under §§ 404.942 and 416.1442 is sufficiently well established by the provisions of these final rules. For many years, ALJs have exercised the authority to dismiss requests for hearing when revised determinations are made under the prehearing case review regulations found at §§ 404.941 and 416.1441, even though such authority is not expressly set forth in the provisions of §§ 404.957 and 416.1457. The same principles apply with respect to the similar, but temporary, provisions being established in these final rules.

*Comment:* One commenter suggested that the proposed rule should be clarified to state whether the ALJ's dismissal of the request for hearing is required or only permitted after the attorney advisor issues a decision, and no party requests that the hearing continue.

*Response:* We have not adopted this comment. An ALJ is required to dismiss a hearing request when the attorney advisor issues a wholly favorable decision and no party makes a written request to proceed with the hearing within 30 days of the date the notice of the decision of the attorney advisor is mailed. Under these rules, the attorney advisor's notice of decision will advise the claimant that the ALJ "will" dismiss the request for hearing under those circumstances.

*Comment:* Several commenters also suggested that the proposed rule should be amended to provide that issuance of a wholly favorable decision by an attorney advisor would result in immediate dismissal of the request for a hearing.

*Response:* We have not adopted this comment. For the purposes of this temporary procedure, we believe it is more appropriate to make dismissal of the request for hearing contingent on the failure of any party to request to proceed with the hearing within 30 days after the date the notice of the attorney advisor's decision is mailed. That requirement clearly establishes that our intent in these temporary provisions is to expedite the processing of cases without infringing on a claimant's right to a hearing before an ALJ.

*Comment:* Several comments stated that the criteria in the proposed rule under which attorney advisors in OHA