

I-2-1-75. Prehearing Conference

Last Update: 4/1/16 (Transmittal I-2-169)

A. General

As provided in 20 CFR 404.961, 405.330, and 416.1461, an administrative law judge (ALJ) may decide on his or her own authority, or at the request of any party to the hearing (see Hearings, Appeals and Litigation Law (HALLEX) manual I-2-1-45), to hold a prehearing conference (PHC) to facilitate the hearing or the hearing decision.

If a case has not yet been assigned to an ALJ, the Hearing Office Chief Administrative Law Judge (HOCALJ) will select an authorized designee to conduct the PHC. If the HOCALJ assigns an authorized designee to conduct PHCs, hearing office management will assign the cases to authorized designees in rotation as practicable, subject to its authority to assign work.

If a case has already been assigned to an ALJ, the ALJ may either conduct the PHC or ask the HOCALJ to assign the next authorized designee in the rotation to conduct the PHC. If an ALJ asks for the assistance of an authorized designee, the ALJ must provide the authorized designee with specific instructions regarding the purpose of the PHC.

Generally, there is no authority for an ALJ to dismiss a request for hearing based solely on a claimant's failure to attend a PHC. However, under 20 CFR 405.330(d) in Region 1, an ALJ may dismiss the request for hearing if the ALJ schedules a PHC where he or she will conduct the proceeding and:

- The ALJ notified the claimant and appointed representative (if any) in the PHC notice that he or she may dismiss the request for hearing if neither the claimant nor the appointed representative appears at the PHC (see 20 CFR 405.380(b)(1)), neither the claimant nor the appointed representative (if any) appears at the PHC, and the claimant (or representative) does not give a good reason for failing to appear; or
- Neither the claimant nor the appointed representative (if any) appears at the PHC, the ALJ requests in writing that the claimant show a good reason under 20 CFR 405.20 for failing to appear, and within 10 days of the notice, the claimant does not give a good reason for failing to appear.

B. Purpose

The purpose of a PHC is generally to:

- Advise an unrepresented claimant of his or her right to representation;
- Explain the hearing process to the claimant;
- Explain what is needed for a finding of disability;
- Discuss the claim(s) file and update medical treatment records including, when applicable, obtaining a new form HA 4631, HA 4632, or SSA 827 (for more information about obtaining a new form SSA 827, see HALLEX I-2-5-14 A);
- Discuss any recent work or school activity, the importance of notifying SSA if the claimant works or returns to school, and the need to complete an HA 4633 to record any new work activity;
- Discuss a particular issue for which the ALJ requested a PHC; or
- Obtain information necessary to determine the next appropriate action or to come to agreement on an issue.

NOTE: During a PHC, only an ALJ can agree to take actions that impact the outcome or merits of a claim and only an ALJ can issue an order based on an agreement or required action resulting from a PHC (see HALLEX I-2-1-75 D and E below). For example, only an ALJ can agree to an action during a PHC that results in the dismissal of a title II claim in a concurrent claim. If a non-ALJ authorized designee conducts the PHC and the case requires agreement on an issue, goes to the merits of a claim, or requires the possible issuance of an order, hearing office management must assign the case to an ALJ (in rotation) to further evaluate the claim and take any necessary action.

C. Scheduling the PHC

Depending on the circumstances involved, and after consulting with hearing office management, the ALJ or authorized designee will decide whether to conduct the PHC in person, by video teleconferencing, or by telephone. Using the appropriate templates in the Document Generation System, the ALJ or authorized designee will notify the claimant of the time, place, and purpose of the PHC in writing at least 7 days before the PHC date, unless all parties have indicated in writing that they waive the right to written notice of the PHC. The ALJ or authorized designee will ensure this writing is associated with the record, and will note the date and time of the PHC in a Remark in the Case Processing and Management System (CPMS).

NOTE 1: If a party requests to postpone a PHC, the ALJ or authorized designee has the discretion to grant or deny the request. However, except in unusual circumstances, the ALJ or authorized designee will not grant multiple requests to postpone a PHC.

Depending on the purpose of the PHC, the ALJ or authorized designee will send all necessary forms and information to the claimant with the PHC notice. Generally, when the claimant is not scheduled to appear at the PHC in person and the claimant is unrepresented, the necessary forms and information will include the following:

- An encrypted compact disc (CD) of the claim(s) file and instructions on opening the CD;
- The "Your Right to Representation" pamphlet (SSA Publication No. 05-10075);
- A list of representative referral services and legal service organizations;
- Form HA-4631, Claimant's Recent Medical Treatment;
- Form HA-4632, Claimant's Medications;
- Form HA-4633, Claimant's Work Background;
- Form SSA-1696, Appointment of Representative; and
- Form SSA-827, Authorization to Disclose Information to the Social Security Administration (if needed, i.e., previously obtained SSA-827s are or soon will be more than 12 month old).

NOTE 2: If the record shows that a party has a limited proficiency in English when the ALJ or authorized designee schedules a PHC, see HALLEX I-2-1-70. If the record shows that a hearing impaired party may require an interpreter, see HALLEX I-2-1-72. For other possible accommodations when scheduling a PHC, see HALLEX I-2-0-8.

NOTE 3: To avoid the possibility of any inadvertent disclosure of personally identifiable information (PII), an ALJ or authorized designee may not hold a PHC with multiple claimants present. Instead, an ALJ or authorized designee will conduct a PHC with one claimant at a time. For more information about PII, see HALLEX I-1-4-5.

NOTE 4: If the ALJ or authorized designee is prejudiced or partial with respect to any party or has any interest in the matter pending for

decision, the ALJ or authorized designee must disqualify or recuse himself or herself from presiding over the PHC (and, when applicable, from adjudicating the pending claim). See HALLEX I-2-1-60.

D. Conducting the PHC

Each PHC must be recorded using Digital Recording Acquisition Project equipment, and the ALJ or authorized designee must ensure the recording becomes part of the record.

An authorized designee who is not assigned to adjudicate the case must not discuss the merits of the claimant's case, the likelihood of benefits being awarded or denied, or the strength of the claimant's case. The authorized designee must neither encourage nor discourage representation, pursuant to Social Security Administration (SSA) policy set forth in Program Operations Manual System GN 03910.010. See also HALLEX I-1-1-1.

Generally, a PHC will begin with an opening statement that provides the following information:

- An introduction by the ALJ or the authorized designee;
- An explanation that the PHC will be recorded (and why);
- Verification of the claimant's contact information;
- A brief statement explaining how the PHC will be conducted, the objectives of the PHC, and what will be discussed; and
- If the claimant appears to be unrepresented, verification that the claimant is unrepresented and an explanation of the right to representation.

NOTE 1: If the claimant is represented and the representative is not present, a PHC cannot be conducted. Additionally, if the claimant indicates that he or she is represented and the hearing office was previously unaware of the representation, the ALJ or authorized designee will provide the claimant with an SSA-1696 to complete with his or her representative and submit to SSA. Even if the representation is not verified, the ALJ or authorized designee will not proceed with the PHC.

NOTE 2: If the claimant indicates that he or she has not received a list of representative referral services or legal service organizations, the ALJ or authorized designee will provide the claimant with a list.

NOTE 3: Although a waiver of the right to representation can be obtained at a PHC, the ALJ must ensure at the time of the hearing that the claimant was fully advised of the effect of a waiver and does not wish to revoke the waiver at the time of the hearing. See HALLEX I-2-6-52. The ALJ must ensure the claimant was fully advised of the waiver even if the ALJ adjudicating the case was the person who conducted the PHC.

NOTE 4: If the claimant requests language assistance or it becomes clear during the PHC that language assistance is necessary, see HALLEX I-2-1-70. If a hearing impaired party requires an interpreter, see HALLEX I-2-1-72. See also HALLEX I-2-0-8 for other possible accommodations.

The ALJ or authorized designee will provide the claimant an opportunity to ask any questions he or she may have, but will avoid answering any questions that are outside the scope of the PHC. Unless a party to the hearing objects, an ALJ who conducts a PHC may issue an order on the record during the PHC, reiterating all agreements and actions resulting from the PHC. If an ALJ conducted the PHC and the ALJ agreed to take certain actions or issue an order after the PHC, the ALJ must explain that he or she will exhibit any orders or agreements after the PHC and

make the information a part of the record. Any agreed to issues or actions are binding on all parties.

E. After the PHC

After the PHC, the ALJ or authorized designee will complete a form SSA-5002, Report of Contact, to document the claimant's name and PHC date, and to summarize the actions taken at the PHC. If an ALJ agreed to take certain actions or issue an order during the PHC, the ALJ must summarize the actions to be taken in writing and proffer the writing to the claimant and representative, if any. (For prehearing proffer procedures, see HALLEX I-2-5-29).

The ALJ or authorized designee will also add a Remark in CPMS documenting the PHC and whether the claimant attended the PHC.