

**NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES
(NOSSCR)**

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Executive Director
Barbara Silverstone

Deputy Commissioner Theresa Gruber and Chief Administrative Law Judge Patrick Nagle
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401

March 18, 2020

Dear Deputy Commissioner Gruber and Chief Judge Nagle,

Thank you for keeping open the lines of communication between OHO and groups like NOSSCR. In these confusing and challenging times, it is both necessary and appreciated.

As claimants and representatives adapt to the closure of all hearing offices to the public, one important question that needs to be resolved is **whether ALJs can hold remote hearings when they are not physically present in the hearing offices**. Some of our members have been told that unless ALJs choose to come to the hearing offices, it is not possible for the ALJ to hold hearings and they must be postponed. Is this accurate?

If there are in fact any ALJs who will not be able to hold hearings while hearing offices are closed to the public, we encourage OHO to use these ALJs for other workloads, such as issuing decision-writing instructions and reviewing decisions for cases where they have already held hearings, reviewing their caseloads for cases where on the record decisions are appropriate (including reviewing all on the record requests submitted by claimants and their representatives), issuing decisions on fee petitions, and issuing decisions on federal court remands that do not require subsequent hearings.

There appears to be a need for **additional technical assistance for OHO staff**. Some seem unaware of how to use the hearing office's existing equipment to host a telephone hearing, and how to use conference calls to increase the number of people in different locations who can participate. This lack of technological expertise is leading to some hearing offices telling representatives that they must be in the same room with their clients because it is not possible to join both phone lines to a telephone hearing.

Relatedly, we reiterate our request that **OHO issue and make publicly available a chief judge's bulletin, HALLEX, or other subregulatory guidance** that explains SSA procedures during the pandemic. We recommend it cover the following topics:

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- The claimant (through their representative if they have appointed one) has the right to object to hearings scheduled or rescheduled by telephone for reasons relating to the COVID-19 pandemic. This supersedes HALLEX I-2-3-10(B)(1)(b) and HALLEX I-2-3-12 A.1.
- When a claimant is represented, the representative should be contacted to discuss postponement or changing the manner of the hearing to telephone or RVP.
- If the claimant and representative cannot be reached to determine their willingness to accept a telephone hearing, they should be assumed to have requested a postponement. The request for hearing should not be dismissed.
- When representatives have RVP agreements, they should be allowed to use them in lieu of phone hearings but should not be required to have the claimant at the RVP site with them if they or the claimant prefer not to be in the same space. If using RVP will require the hearing to be rescheduled or reassigned to a different ALJ, the representative should be informed so that he or she can discuss this with the claimant.
- The claimant and representative do not need to be in the same physical location for telephone hearings. If hearing office staff cannot join both phone lines to the hearing but the representative is willing to call the claimant first and then merge the call with SSA, that should be permitted.
- Developing good cause before dismissing a request for a hearing is necessary in all cases where the representative and/or claimant failed to appear at a hearing scheduled for March, April, or May 2020. Instructions about hearings scheduled for future months will be made by [date]. This supersedes HALLEX I-2-4-25 (C)(3). Findings of “good cause” should be made when challenges to appearing at the hearing due to the COVID-19 pandemic are alleged.
- Issuance of fully favorable decisions without hearings are encouraged when the evidence in the claims file is sufficient to do so.
- Hearings that are postponed because the claimant opposed a telephone hearing will be rescheduled as soon as possible, using the date of the request for hearing for SSA’s first-in, first-out model. However, cases with critical case designations will be given the earliest possible hearing spots. Claimants will be given 75 days’ notice of hearings unless they choose to waive this right and accept hearings with less notice.

Having publicly available written guidance is crucial because we have heard reports from representatives around the country, since Commissioner Saul’s press release closing Social Security offices to the public, of ALJs postponing hearings when claimants and representatives are willing to proceed by phone. Conversely, representatives in various parts of the country whose clients wish to have their hearings postponed have been told that the ALJ is still planning to hold in-person hearings later this month, or that claimants will have to demonstrate why having a phone hearing is a hardship.

Thank you so much for your consideration of these suggestions. We remain grateful for your assistance and would be happy to talk with you at any time if it would be helpful.

Sincerely,

Barbara Silverstone

Executive Director