

**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

July 1, 2020

Dear Deputy Commissioner Gruber and Chief Judge Nagle,

Thank you for your hard work and open communications during the ongoing pandemic. NOSSCR appreciates the effort it took to provide the option of telephone hearings to tens of thousands of disability claimants. We understand that until at least the end of August, OHO is only performing hearings by telephone. As you contemplate how to conduct hearings in future months, we wanted to share NOSSCR's thoughts and concerns.

We strongly believe claimants have the due process right to in-person hearings. That belief is what led us to [oppose](#) SSA's proposed rule removing the right to opt out of video hearings, and it is what led us to send you a [letter](#) in April urging you to continue allowing people to opt out of telephone hearings during the pandemic and to publish subregulatory guidance on this topic.

The option of telephone hearings has allowed people to receive disability benefits before they died or faced financial ruin. But telephone hearings are only an acceptable option during these most dire and temporary circumstances; **they must remain optional**. We have heard many reports about OHO staff pressuring claimants and representatives to accept them. We urge you to issue publicly available guidance stating that:

- Claimants and representatives must not be pressured to accept (or reject) telephone hearings or waive 75 days' notice of hearings.
- Representatives must not be encouraged to file "blanket waivers" of the right to an in-person hearing; claimants have the right to decide the manner of hearing for themselves.
- ALJ assignments must not change based on the manner of hearing the claimant selects. If the assignment changes for another reason (e.g., the retirement of an ALJ) the claimant and representative must be given timely notice.
- OHO staff must not delay processing 1696 forms, providing access to files, exhibiting files, adding queries to files, or processing requests for on the record decisions for claimants who have chosen to have in-person hearings.
- Claimants and representatives are allowed to be in the same or different locations for phone hearings. This is especially important for claimants without reliable phone service.

We also urge you to update hearing notices to accurately describe the manner of each hearing and explain that telephone hearings are optional. The Office of Management and Budget has expedited procedures for pandemic-related changes to notices that OHO should use.

Claimants and representatives are often unable to contact OHO staff or hearing reporters when they have not been called at the scheduled time for telephone hearings (ALJs and hearing offices can run hours behind schedule), when they are unable to hear the proceedings, or when they have been disconnected. Hearings can go on for an extended period of time with the ALJ unaware that a participant is no longer on the call. OHO should develop practices to avoid these situations and remedy them when they occur.

Many NOSSCR members want OHO to begin offering video hearings again. NOSSCR supported the option of video hearings, at the claimant's discretion, even before the pandemic. The current situation, where hearing participants may be unable to return to the sites where video hearings were conducted, makes video hearings more challenging. We encourage OHO to offer video hearings if they are safe, private, and optional.

However, video hearings are not a substitute for in-person hearings. There are many cases where a claimant wants to be in the same room as the ALJ, and we strongly believe that claimants must retain their right to do so, even if the claimant will wait longer for such a hearing. Therefore, we urge OHO to begin work now to make in-person hearing sites safer for employees, contractors, claimants, and representatives. This may involve physical changes like plexiglass shields, hand cleaning stations, more space between people, and changes to building ventilation, as well as changes to protocols on hearing scheduling, office cleaning, and other topics. All changes should accommodate the needs of people with disabilities who will enter hearing offices. SSA should work with experts to develop evidence-based benchmarks for when and how each hearing office can reopen, understanding that some offices may be able to open sooner than others.

Even before hearing offices reopen to the public, they should be made as safe as possible for the staff who are going in to handle tasks that cannot be done remotely. SSA should continue to improve its technology and business processes to maximize the work that can be done remotely. This includes improved processing of 1696 forms, allowing the HA-55 form to be submitted electronically, and developing ways to handle paper cases and non-disability cases.

While all claimants must retain the right to in-person hearings, those who believe it will be impracticable or unsafe to attend should be allowed to choose video or telephone hearings even after hearing offices reopen. **To the extent that SSA offers in-person, video, and telephone hearings, they should each be optional. The claimant should be able to choose the appropriate manner of hearing.** Since circumstances are changing so rapidly and the wait time for a hearing is approximately one year, claimants should be able to select a different manner of hearing close to when the hearing is scheduled to occur.

SSA should also increase screening for cases where fully favorable decisions can be issued on the record, allowing claimants to avoid the need for a hearing altogether. In cases where such a decision could be made with minimal additional evidence (a recent blood pressure screening, a W2 or pay stub, etc.) the claimant's representative (or the unrepresented claimant) should be notified and given time to obtain and submit the evidence.

We would be glad to discuss these issues with you. We look forward to working together to ensure that claimants receive safe and timely hearings and prompt and accurate decisions.

Sincerely,

Barbara Silverstone
Executive Director