



NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS'
REPRESENTATIVES

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Faye Lipsky, Federal Register Liaison
Office of Regulations
Social Security Administration
3rd Floor (East), Altmeyer Building
6401 Security Boulevard
Baltimore, Maryland 21235-6401

Submitted via regulations.gov

RE: NPRM—Setting the Manner of Appearance of Parties and Witnesses at Hearings
(Docket No. SSA-2022-0013)

Dear Director Lipsky:

We appreciate the opportunity to comment on the notice of proposed rulemaking published by the Social Security Administration (“SSA”): “Setting the Manner of Appearance of Parties and Witnesses at Hearings.” These comments are submitted on behalf of the National Organization of Social Security Claimants’ Representatives (“NOSSCR”), a specialized bar association for attorneys and advocates who represent Social Security Disability Insurance (“SSDI”) and Supplemental Security Income (“SSI”) claimants throughout the adjudication process and in federal court.

NOSSCR generally supports SSA’s rapid transition to multiple disability hearing “standard manners of appearance.” The needs of claimants and their representatives are served by allowing some hearings to be conducted using private electronic devices with secure online video conferencing applications (“Teams”). This flexibility allowed SSA to conduct hearings during the COVID-19 national emergency, and it continues to allow for hearings to be held in a manner that reduces the cost, stress, and scheduling conflicts experienced by claimants and advocates. NOSSCR has always supported options remaining available to claimants, and we appreciate the extent to which the NPRM maintains the claimant’s right to maintain control over how a hearing will be conducted.

NOSSCR is concerned that the word “video” is used in these proposed regulations to reference two very different methods for conducting a hearing. Current regulations describe an option for a hearing by video teleconferencing (“VTC”)—where normally a

claimant and the representative must travel to an SSA office and participate in a hearing using equipment controlled by SSA. These hearings are “in person” from the perspective of the claimant (who normally must travel and appear at an SSA office along with the representative), with the judge participating by “video.” Historically, these hearings could be inferior to the usual “in person” hearings, as the rooms made available were frequently small and not soundproofed. While a VTC hearing location would occasionally be more convenient for the claimant, too often the VTC locations were more difficult in terms of travel, expense, and the stress of security or long lines for entrance. A “video” hearing using an online video “app” such as Teams is entirely different for both the claimant and representative. A Teams hearing allows the participants to avoid travel—reducing cost, stress, and conflicts. A Teams hearing is so different from a VTC hearing that SSA’s regulations should be careful to use different terminology. The NPRM does not differentiate between these two types of “video” hearing, resulting in a confusing statement of SSA’s policies. Appearing by “video” may be similar for the judge (considering VTC and Teams options), but for the claimant and representative there are meaningful differences.

NOSSCR supports a continued policy of allowing a claimant to alter the manner of appearance—the “modality” for the hearing (in person or using Teams)—until the hearing is held. Many SSDI and SSI claimants are dealing with rapidly changing income and health status (including emergency hospitalizations). Claimants often lack reliable housing or transportation. A claimant may be confident that an in-person hearing is viable when a hearing is requested, only to have circumstances change during the delay before that hearing is conducted. SSA’s mission is to serve claimants while recognizing that poverty and disability can produce the need for flexibility, and yet these proposed regulations go unnecessarily far in aiding SSA’s scheduling. Confining the period when a claimant may object to “within 30 days after the date you receive the notice” (e.g., proposed section 404.936(d)) is more restrictive than current practice and would fail to recognize the rapidly changing circumstances of claimants. Within the 30-day period, a claimant may have ready access to either transportation or a personal electronic device with internet access—only to lose those things in the many months before a hearing is scheduled or held. SSA currently schedules hearings without the need for such a new deadline, and NOSSCR supports a regulation that omits such unnecessary restriction.

NOSSCR supports a claimant’s right to a hearing before an ALJ who is local to the claimant’s residence. Local healthcare options, cultural and other barriers to evidence, language and other regional differences all contribute to a claimant receiving a higher quality hearing before a local ALJ. These proposed regulations continue to encourage a problematic slide within SSA toward scheduling hearings with ALJs who lack knowledge of the claimant’s region.

NOSSCR asks that SSA's policy describe the need to conduct hearings using multiple formats during a judge's day. Too often, the pressures for scheduling convenience serving SSA's employees are allowed to outweigh the needs of claimants to have their hearings held using first-in first-out scheduling. SSA's regulations should describe a policy that the method of a hearing—whether in person, VTC, or Teams—should never place a claimant at a disadvantage or result in delay. The method for conducting the hearing must not be permitted to slow the hearings process for claimants who select the option disfavored by an ALJ or hearings office. The proposed regulations fail to address these issues.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Camp', with a stylized flourish at the end.

David Camp
Chief Policy Officer