

**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 13, 2020

Dear Deputy Commissioner Gruber and Chief Judge Nagle,

We realize that COVID-19 is causing significant concern and adjustments across the country. Social Security claimants, their representatives, and SSA staff and contractors are no exception.

Currently, there is a great deal of confusion and concern about how upcoming hearings are being scheduled. It appears that some ALJs are requiring telephonic hearings and others are refusing them. Given SSA's recent final rule giving the agency, rather than individual adjudicators, the power to set the time, place, and manner of hearings (84 FR 69298), it is critical that OHO create publicly-available guidance, such as a Chief Judge Bulletin, **as soon as possible** about how the agency will be determining when hearings will be scheduled and the manner in which they will be held. If the agency is delegating this authority to ALJs or others, it would be useful to provide details on this delegation so that everyone involved in hearings understands how the process will work.

We recommend that this guidance state that if a claimant (or his or her representative) requests that a hearing scheduled for March or April 2020 be held via telephone or at an authorized Representative Video Project site, that this request will be granted. The guidance should indicate that the claimant and representative need not be in the same location but that a three-way call is permissible. The guidance can give a deadline for claimants and representatives to make this request (perhaps five business days before the hearing) but grant good cause for late requests when hearings are scheduled very close to when the guidance is promulgated. The guidance should indicate a date by which this policy will be evaluated for hearings scheduled in May 2020 and subsequent months.

However, NOSSCR has not changed its long-standing policy that claimants should be allowed to have in-person hearings when they feel it is most appropriate for their situations, even if this means they must wait longer for a hearing. To that end, we recommend that OHO's guidance include the following:

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- If the agency determines that scheduling a telephone hearing or converting a scheduled video or in-person hearing to a telephone hearing is appropriate because of the COVID-19 pandemic, claimants should be permitted to instead request that they be rescheduled for in-person or (if they have not submitted an HA-55 form) video hearings. Claimants can be informed that this may lead to their hearing being later than it otherwise would have been, or with a different ALJ than has already been assigned, but they should still be allowed to oppose a telephone hearing.
 - If a claimant is scheduled for a telephone hearing and their representative participates in the Representative Video Project and would like to perform the hearing using their RVP technology, the agency should grant this request. Given that some ALJs may be quarantined or unable to access video hearings, claimants (through their representatives) should be informed if this would require rescheduling or reassigning hearings to different ALJs.
- If the agency determines that a telephone hearing is appropriate for reasons other than COVID-19 (for example, extraordinary circumstances, such as incarceration or institutionalization, that mandate a telephone hearing), existing policy in HALLEX I-2-3-10 and I-2-3-12.A.1 would still apply.

In addition to providing guidance about hearing scheduling, we hope OHO will continue and expand its review of cases that could receive fully favorable decisions without the need for hearings. Senior Attorneys and ALJs should be encouraged to review requests for On the Record decisions and to issue them when appropriate even if a request has not been made.

We realize that situations vary in different parts of the country and are changing rapidly; that SSA staff, claimants, and representatives have a variety of different needs; and that OHO must follow guidance from SSA leadership and other agencies such as the Office of Personnel Management. These are reasons to act as quickly as possible.

Thank you for your consideration. Please do not hesitate to contact us if you have any questions or if we can help you in drafting and publicizing any guidance.

Sincerely,

Barbara Silverstone
Executive Director