

Food and Nutrition Service, USDA

§ 283.11

Copies of the initial decision or denial of the State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by the State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service in accordance with § 283.17(c)(2) unless reconsideration or review by the Judicial Officer is sought as discussed in §§ 283.17(d) and 283.20.

§ 283.8 Rebuttal or amendment of appeal or answer.

(a) Not later than 30 days after FNS submits an answer in accordance with § 283.6, the State agency may submit rebuttal evidence.

(b) At any time prior to the filing of a motion for a hearing pursuant to § 283.15(b), the appeal petition or the answer may be amended without prior authorization by the ALJ. Thereafter, such an amendment may only be made as authorized by the ALJ upon a showing of cause.

§ 283.9 Withdrawal of appeal.

At any time before the ALJ files an initial decision, the State agency may withdraw its appeal and agree to pay the full amount of the claim. By withdrawing an appeal, the State agency waives all opportunity to appeal or seek further administrative or judicial review on the claim or related matters.

§ 283.10 Consent decision.

At any time before the ALJ files an initial decision, FNS and the State agency may agree to entry of a consent decision. Such decision shall be filed in the form of a decision signed by the parties with appropriate space for signature by the ALJ and shall contain an admission of at least the jurisdictional facts, consent to the issuance of the agreed decision without further procedure and such other admissions or statements as may be agreed between the parties. The ALJ shall enter such decision without further procedures, unless an error is apparent on the face of the document. Such decision shall be final and shall take effect 30 days after the date of the delivery or service of

such decision and is not subject to further administrative or judicial.

§ 283.11 Prehearing conference and procedure.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing. The prehearing conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time, place of the prehearing conference and if personal attendance will be necessary shall be given. Prehearing conferences may be conducted telephonically. The ALJ shall order each of the parties to furnish at the prehearing conference or at another time prior to the hearing the following:

- (1) An outline of the appeal or defense;
- (2) The legal theories upon which the party will rely;
- (3) Copies of or a list of documents that the party anticipates relying upon at the hearing; and
- (4) A list of witnesses who will testify on behalf of the party. At the discretion of the party furnishing such list of witnesses, the names of the witnesses need not be furnished if they are otherwise identified in some meaningful way, such as a short statement of the type of evidence they will offer.

(b) *Procedures.* The ALJ shall not order any of the foregoing procedures that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) *Matters to be considered.* At the prehearing conference, the following matters shall be considered:

- (1) The simplification of issues;
- (2) The necessity of amendments to pleadings;
- (3) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;
- (4) The limitation of the number of expert or other witnesses;
- (5) Negotiation, compromise, or settlement of issues;
- (6) The exchange of copies of proposed exhibits;