

§ 1005.6

42 CFR Ch. V (10–1–02 Edition)

routine questions concerning administrative functions or procedures.

§ 1005.6 Prehearing conferences.

(a) The ALJ will schedule at least one prehearing conference, and may schedule additional prehearing conferences as appropriate, upon reasonable notice to the parties.

(b) The ALJ may use prehearing conferences to discuss the following—

- (1) Simplification of the issues;
 - (2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
 - (3) Stipulations and admissions of fact or as to the contents and authenticity of documents;
 - (4) Whether the parties can agree to submission of the case on a stipulated record;
 - (5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;
 - (6) Limitation of the number of witnesses;
 - (7) Scheduling dates for the exchange of witness lists and of proposed exhibits;
 - (8) Discovery of documents as permitted by this part;
 - (9) The time and place for the hearing;
 - (10) Such other matters as may tend to encourage the fair, just and expeditious disposition of the proceedings; and
 - (11) Potential settlement of the case.
- (c) The ALJ will issue an order containing the matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 1005.7 Discovery.

(a) A party may make a request to another party for production of documents for inspection and copying which are relevant and material to the issues before the ALJ.

(b) For the purpose of this section, the term documents includes information, reports, answers, records, accounts, papers and other data and documentary evidence. Nothing contained in this section will be interpreted to require the creation of a document, ex-

cept that requested data stored in an electronic data storage system will be produced in a form accessible to the requesting party.

(c) Requests for documents, requests for admissions, written interrogatories, depositions and any forms of discovery, other than those permitted under paragraph (a) of this section, are not authorized.

(d) This section will not be construed to require the disclosure of interview reports or statements obtained by any party, or on behalf of any party, of persons who will not be called as witnesses by that party, or analyses and summaries prepared in conjunction with the investigation or litigation of the case, or any otherwise privileged documents.

(e)(1) When a request for production of documents has been received, within 30 days the party receiving that request will either fully respond to the request, or state that the request is being objected to and the reasons for that objection. If objection is made to part of an item or category, the part will be specified. Upon receiving any objections, the party seeking production may then, within 30 days or any other time frame set by the ALJ, file a motion for an order compelling discovery. (The party receiving a request for production may also file a motion for protective order any time prior to the date the production is due.)

(2) The ALJ may grant a motion for protective order or deny a motion for an order compelling discovery if the ALJ finds that the discovery sought—

- (i) Is irrelevant,
- (ii) Is unduly costly or burdensome,
- (iii) Will unduly delay the proceeding, or
- (iv) Seeks privileged information.

(3) The ALJ may extend any of the time frames set forth in paragraph (e)(1) of this section.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

[57 FR 3350, Jan. 29, 1992, as amended at 58 FR 5618, Jan. 22, 1993; 65 FR 24418, Apr. 26, 2000; 65 FR 35584, June 5, 2000; 67 FR 11936, Mar. 18, 2002]