

§ 283.18

7 CFR Ch. II (1-1-03 Edition)

record. The transcript shall be deemed to be certified without further action by the ALJ.

(3) At any time prior to the filing of the ALJ's initial decision and after consideration of any objections filed as to the transcript, the ALJ may issue an order making any corrections in the transcript that the ALJ finds are warranted. Such corrections shall be entered into the original transcript by the Hearing Clerk (without obscuring the original text).

(b) *Proposed findings of fact, conclusions of law, order, and briefs.* The parties may file proposed findings of fact, conclusions of law and orders based solely upon the record and on officially noticed matters, and briefs in support thereof. Briefs may be filed at the discretion of the ALJ. The ALJ shall announce at the hearing the time within which these documents may be filed.

(c) *ALJ's initial decision.* (1) The ALJ shall decide the appeal not later than 60 days after receipt of rebuttal evidence submitted by the State agency or, if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal. In accordance with § 283.22(f), the ALJ may, upon motion or *sua sponte*, extend this deadline for cause shown.

(2) The ALJ shall prepare, upon the basis of the record and officially noticed matters, and shall file, an initial decision which shall include a decision on a request for good cause relief, a copy of which shall be served upon each of the parties.

(3) Such initial decision shall be considered final for purposes of judicial review without further proceedings, unless there is a motion for reconsideration filed pursuant to § 283.17(d) or review by the Judicial Officer is sought pursuant to § 283.20.

(4) If no motion for reconsideration or review by the Judicial Officer is filed, the initial decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 day after service.

(d) *Motion for reconsideration.* (1) Except as provided in paragraph (d)(4) of this section, any party may file a mo-

tion for reconsideration of the initial decision within 30 days of service of the initial decision. If served by mail, the time for filing a motion for reconsideration will be 5 days longer in accordance with § 283.22.

(2) Every such motion must set forth the matters claimed to have been erroneously decided and the basis of the alleged errors. Such motion shall be accompanied by a supporting brief.

(3) Responses to such motions shall be filed in accordance with § 283.18(d).

(4) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(5) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(6) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 days after service unless review by the Judicial Officer is sought in accordance with § 283.20.

(7) If the ALJ issues a revised initial decision, that decision shall constitute the final notice of determination for purposes of judicial review and shall become effective 30 days after service unless review by the Judicial Officer is sought in accordance with § 283.20.

§ 283.18 Motions and requests.

(a) *Filing.* All motions and requests shall be filed with the Hearing Clerk, and served upon all the parties by the moving or requesting party, except motions and requests made on the record during the oral hearing. The ALJ assigned to the appeal or the Chief Judge shall rule upon all motions and requests filed or made prior to seeking review of the ALJ's initial decision pursuant to § 283.20, except motions directly relating to such review. Thereafter, the Judicial Officer shall rule on any motions and requests as well as the motions directly relating to the review of the ALJ's initial decision.

(b) *Time for filing.* Any motion or request may be filed at any time, except that:

(1) Motions to dismiss pursuant to § 283.5 must be filed within the time allowed for filing an answer; and

Food and Nutrition Service, USDA

§ 283.20

(2) Motions for reconsideration must be filed within 30 days of service of the ALJ's initial decision pursuant to § 283.17(d).

(c) *Contents.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefor.

(d) *Response to motions and requests.* Within 10 days after service of any written motion or request or within such shorter or longer period as may be fixed by the ALJ or Judicial Officer, an opposing party may file a response to the motion or request. The moving party shall have no right to reply to the response; however, the ALJ or Judicial Officer may order that a reply be filed.

(e) *Certification to the Judicial Officer.* The submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to the seeking of review pursuant to § 283.20 shall be made by and in the discretion of the ALJ. The ALJ may either rule upon or certify the motion, request, objection, or other question to the Judicial Officer, but not both.

§ 283.19 ALJs.

(a) *Assignment.* No ALJ shall be assigned to serve in any appeal who:

(1) Has any pecuniary interest in any matter or business involved in the appeal,

(2) Is related by blood or marriage to any party in the appeal, or

(3) Has any conflict of interest which might impair the ALJ's objectivity in the appeal.

(b) *Disqualification of ALJ.* (1) Any party to the appeal may, by motion, request that the ALJ withdraw from the appeal on one or more of the grounds set out in paragraph (a) of this section. Such motion shall set forth with particularity the alleged grounds for disqualification. The ALJ may then either rule upon or certify the motion to the Judicial Officer, but not both.

(2) The ALJ may withdraw from any appeal for any reason deemed by the ALJ to be disqualifying.

(c) *Powers.* (1) Subject to review as provided elsewhere in this part, the ALJ, in any assigned appeal, shall have the power to:

(i) Rule upon motions and requests;

(ii) Set the time and place of a pre-hearing conference and the time of the hearing, adjourn the hearing from time to time, and change the time of the hearing;

(iii) Administer oaths and affirmations;

(iv) Regulate the scope and timing of discovery;

(v) Issue and enforce subpoenas as authorized under 7 U.S.C. 2023(a) and these rules;

(vi) Summon and examine witnesses and receive evidence at the hearing;

(vii) Appoint expert witnesses in accordance with the provisions of Rule 706 of the Federal Rules of Evidence;

(viii) Admit or exclude evidence;

(ix) Hear oral argument on facts or law;

(x) Upon motion of a party, decide cases, in whole or in part, by non-oral hearing procedures under subpart C of this part where there is no disputed material issue of fact;

(xi) Perform all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;

(xii) Take all other actions authorized under the Act and these rules, including the extension of time upon motion of a party or *sua sponte* for cause shown.

(2) The ALJ may not rule upon the validity of Federal statutes or regulations.

(d) *Who may act in the absence of the ALJ.* In case of the absence of the ALJ or the ALJ's inability to act, the powers and duties to be performed by the ALJ under these rules of practice in connection with any assigned appeal may, without abatement of the appeal, unless otherwise directed by the Chief Judge, be assigned to any other ALJ.

§ 283.20 Review by the Judicial Officer.

(a) *Filing of review petition.* (1) Within 30 days after service of the ALJ's initial decision, or any part thereof, any party may seek Judicial Officer review of such decision by filing a review petition with the Hearing Clerk. However, if another party files a motion for reconsideration under § 283.17(d), consideration of the review petition shall be