

§ 81.39

(iii) Informs the recipient of the ALJ's decision by certified mail, return receipt requested.

(2) An authorized Departmental official may modify and reissue a notice that an ALJ returns.

(c) If the notice of a disallowance decision meets the requirements of § 81.34, the ALJ decides whether the application for review meets the requirements of § 81.37.

(1) If the application, including any supplements or amendments under § 81.37(d), does not meet those requirements, the disallowance decision becomes the final decision of the Department.

(2) If the application meets those requirements, the ALJ—

(i) Informs the recipient and the authorized Departmental official that the OALJ has accepted jurisdiction of the case; and

(ii) Schedules a hearing on the record.

(3) The ALJ informs the recipient of the disposition of its application for review by certified mail, return receipt requested. If the ALJ decides that the application does not meet the requirements of § 81.37, the ALJ informs the recipient of the reasons for the decision.

(Authority: 20 U.S.C. 1221e-3, 1234 (e) and (f)(1), 1234a(b), and 3474(a))

[54 FR 19512, May 5, 1989. Redesignated and amended at 58 FR 43473, Aug. 16, 1993]

§ 81.39 Submission of evidence.

(a) The ALJ schedules the submission of the evidence, whether oral or documentary, to occur within 90 days of the OALJ's receipt of an acceptable application for review under § 81.37.

(b) The ALJ may waive the 90-day requirement for good cause.

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(c), and 3474(a))

[54 FR 19512, May 5, 1989. Redesignated and amended at 58 FR 43473, Aug. 16, 1993]

§ 81.40 Burden of proof.

If the OALJ accepts jurisdiction of a case under § 81.38, the recipient shall present its case first and shall have the burden of proving that the recipient is not required to return the amount of

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funds that the disallowance decision requires to be returned because—

(a) An expenditure identified in the disallowance decision as unallowable was allowable;

(b) The recipient discharged its obligation to account properly for the funds;

(c) The amount required to be returned does not meet the standards for proportionality in § 81.32;

(d) The amount required to be returned includes an amount attributable to mitigating circumstances under the standards in § 81.33; or

(e) The amount required to be returned includes an amount expended in a manner not authorized by law more than five years before the recipient received the notice of the disallowance decision.

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(b)(3), 1234b(b)(1), and 3474(a))

[54 FR 19512, May 5, 1989. Redesignated and amended at 58 FR 43473, Aug. 16, 1993]

§ 81.41 Initial decision.

(a) The ALJ makes an initial decision based on the record.

(b) The initial decision includes the ALJ's findings of fact, conclusions of law, and reasoning on all material issues.

(c) The initial decision is transmitted to the Secretary by hand-delivery or Department mail, and to the parties by certified mail, return receipt requested, by the Office of Administrative Law Judges.

(d) For the purpose of this part, "initial decision" includes an ALJ's modified decision after the Secretary's remand of a case.

(Authority: 5 U.S.C. 557(c); 20 U.S.C. 1221e-3, 1234(f)(1), and 3474(a))

[54 FR 19512, May 5, 1989. Redesignated and amended at 58 FR 43473, 43474, Aug. 16, 1993]

§ 81.42 Petition for review of initial decision.

(a) If a party seeks to obtain the Secretary's review of the initial decision of an ALJ, the party shall file a petition for review with the Office of Hearings and Appeals, which immediately forwards the petition to the Office of the Secretary.

(b) A party shall file a petition for review not later than 30 days after the date it receives the initial decision.

(c) If a party files a petition for review, the party shall serve a copy of the petition on the other party on the filing date by hand delivery or by “overnight or express” mail. If agreed upon by the parties, service of a copy of the petition may be made upon the other party by facsimile transmission.

(d) Any written submission to the Secretary under this section must be accompanied by a statement certifying the date that the filed material was served on the other party.

(e) A petition for review of an initial decision must contain—

(1) The identity of the initial decision for which review is sought; and

(2) A statement of the reasons asserted by the party for affirming, modifying, setting aside, or remanding the initial decision in whole or in part.

(f)(1) A party may respond to a petition for review of an initial decision by filing a statement of its views on the issues raised in the petition with the Secretary, as provided for in this section, not later than 15 days after the date it receives the petition.

(2) A party shall serve a copy of its statement of views on the other party by hand delivery or mail, and shall certify that it has done so pursuant to the provisions of paragraph (d) of this section. If agreed upon by the parties, service of a copy of the statement of views may be made upon the other party by facsimile transmission.

(g)(1) The filing date for written submissions under this section is the date the document is—

(i) Hand delivered;

(ii) Mailed; or

(iii) Sent by facsimile transmission.

(2) If a scheduled filing date falls on a Saturday, Sunday or a Federal holiday, the filing deadline is the next business day.

(Authority: 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(e), and 3474(a))

[58 FR 43474, Aug. 16, 1993]

§ 81.43 Review by the Secretary.

(a)(1) The Secretary’s review of an initial decision is based on the record of the case, the initial decision, and

any proper submissions of the parties or other participants in the case.

(2) During the Secretary’s review of the initial decision there shall not be any *ex parte* contact between the Secretary and individuals representing the Department or the recipient.

(b) The ALJ’s findings of fact, if supported by substantial evidence, are conclusive.

(c) The Secretary may affirm, modify, set aside, or remand the ALJ’s initial decision.

(1) If the Secretary modifies, sets aside, or remands an initial decision, in whole or in part, the Secretary’s decision includes a statement of reasons that supports the Secretary’s decision.

(2)(i) The Secretary may remand the case to the ALJ with instructions to make additional findings of fact or conclusions of law, or both, based on the evidence of record. The Secretary may also remand the case to the ALJ for further briefing or for clarification or revision of the initial decision.

(ii) If a case is remanded, the ALJ shall make new or modified findings of fact or conclusions of law or otherwise modify the initial decision in accordance with the Secretary’s remand order.

(iii) A party may appeal a modified decision of the ALJ under the provisions of §§ 81.42 through 81.45. However, upon that review, the ALJ’s new or modified findings, if supported by substantial evidence, are conclusive.

(3) The Secretary, for good cause shown, may remand the case to the ALJ to take further evidence, and the ALJ may make new or modified findings of fact and may modify the initial decision based on that new evidence. These new or modified findings of fact are likewise conclusive if supported by substantial evidence.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 1221e-3, 1234(f)(1), 1234a(d), and 3474(a))

[58 FR 43474, Aug. 16, 1993, as amended at 60 FR 46494, Sept. 6, 1995]

§ 81.44 Final decision of the Department.

(a) The ALJ’s initial decision becomes the final decision of the Department 60 days after the recipient receives the ALJ’s decision unless the