

§ 410.631

(a) An initial determination and reconsideration of the determination have been made by the Social Security Administration concerning a matter designated in § 410.610;

(b) An initial determination denying waiver of adjustment of recovery of an overpayment based on a personal conference has been made by the Social Security Administration (see § 410.561a); or

(c) An initial determination denying waiver of adjustment or recovery of an overpayment based on a review of the written evidence of record has been made by the Social Security Administration (see § 410.561a) and the determination was made concurrent with, or subsequent to, our reconsideration determination regarding the underlying overpayment but before an administrative law judge holds a hearing.

[61 FR 56133, Oct. 31, 1996]

§ 410.631 Time and place of filing request.

The request for hearing shall be made in writing and filed at an office of the presiding officer, or the Appeals Council. Except where the time is extended as provided in § 410.669, the request for hearing must be filed:

(a) Within 60 days after the date of receipt of notice of the reconsidered determination by such individual. For purposes of this section, the date of receipt of notice of the reconsidered determinations shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary; or

(b) Where an effective date (not more than 30 days later than the date of mailing) is expressly indicated in such notice, within 60 days after such effective date.

[41 FR 47918, Nov. 1, 1976]

§ 410.632 Parties to a hearing.

The parties to a hearing shall be the person or persons who were parties to the initial determination in question and the reconsideration. Any other individual may be made a party if such individual's rights with respect to benefits may be prejudiced by the decision, upon notice given to him by the Administrative Law Judge to appear at

20 CFR Ch. III (4-1-08 Edition)

the hearing or otherwise present such evidence and contentions as to fact or law as he may desire in support of his interest.

§ 410.633 Additional parties to the hearing.

The following individuals, in addition to those named in § 410.632, may also be parties to the hearing. A widow, child, parent, brother, sister, or representative of a decedent's estate, who makes a showing in writing that such individual's rights with respect to benefits may be prejudiced by any decision that may be made, may be a party to the hearing.

[37 FR 20652, Sept. 30, 1972]

§ 410.634 Administrative Law Judge.

The hearing provided for in this subpart F shall, except as herein provided, be conducted by an Administrative Law Judge designated by the Deputy Commissioner for Programs and Policy, or his or her designee. In an appropriate case, the Deputy Commissioner may designate another Administrative Law Judge or a member or members of the Appeals Council to conduct a hearing, in which case the provisions of this subpart F governing the conduct of a hearing by an Administrative Law Judge shall be applicable thereto.

[36 FR 23760, Dec. 14, 1971, as amended at 62 FR 38453, July 18, 1997]

§ 410.635 Disqualification of Administrative Law Judge.

No Administrative Law Judge shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for decision before him. Notice of any objection which a party may have to the Administrative Law Judge who will conduct the hearing, shall be made by such party at his earliest opportunity. The Administrative Law Judge shall consider such objection and shall, in his discretion, either proceed with the hearing or withdraw. If the Administrative Law Judge withdraws, another Administrative Law Judge shall be designated by

Social Security Administration

§ 410.639

the Deputy Commissioner for Programs and Policy, or his or her designee to conduct the hearing. If the Administrative Law Judge does not withdraw, the objecting party may, after the hearing, present his objections to the Appeals Council, as provided in §§ 410.660 through 410.664 as reasons why the Administrative Law Judge's decision should be revised or a new hearing held before another Administrative Law Judge.

[36 FR 23760, Dec. 14, 1971, as amended at 62 FR 38453, July 18, 1997]

§ 410.636 Time and place of hearing.

The Administrative Law Judge (formerly called "hearing examiner") shall fix a time and a place within the United States for the hearing, written notice of which, unless waived by a party, shall be mailed to the parties at their last known addresses or given to them by personal service, not less than 10 days prior to such time. As used in this section and in § 410.647, the United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. Written notice of the objections of any party to the time and place fixed for a hearing shall be filed by the objecting party with the Administrative Law Judge at the earliest practicable opportunity (before the time set for such hearing). Such notice shall state the reasons for the party's objection and his choice as to the time and place within the United States for the hearing. The Administrative Law Judge may, for good cause, fix a new time and/or place within the United States for the hearing.

[37 FR 20652, Sept. 30, 1972]

§ 410.637 Hearing on new issues.

At any time after a request for hearing has been made, as provided in § 410.631, but prior to the mailing of notice of the decision, the Administrative Law Judge may, in his discretion, either on the application of a party or his own motion, in addition to the matters brought before him by the request for hearing, give notice that he will also consider any specified new issue (see § 410.610) whether pertinent to the same or a related matter, and whether

arising subsequent to the request for hearing, which may affect the rights of such party to benefits under this part even though the Administration has not made an initial and reconsidered determination with respect to such new issue: *Provided*, That notice of the time and place of the hearing on any new issue shall, unless waived, be given to the parties within the time and manner specified in § 410.636: *And provided further*, That the determination involved is not one within the jurisdiction of a State agency under a Federal-State agreement entered into pursuant to section 413(b) of the Act. Upon the giving of such notice, the Administrative Law Judge shall, except as otherwise provided, proceed to hearing on such new issue in the same manner as he would on an issue on which an initial and reconsidered determination has been made by the Administration and a hearing requested with respect thereto by a party entitled to such hearing.

§ 410.638 Change of time and place for hearing.

The Administrative Law Judge may change the time and place for the hearing, either on his own motion or for good cause shown by a party. The Administrative Law Judge may adjourn or postpone the hearing, or he may reopen the hearing for the receipt of additional evidence at any time prior to the mailing of notice to the party of the decision in the case. Reasonable notice shall be given to the parties of any change in the time or place of hearing or of an adjournment or a reopening of the hearing.

§ 410.639 Subpenas.

When reasonably necessary for the full presentation of a case, an Administrative Law Judge (formerly called "hearing examiner") or a member of the Appeals Council, may, either upon his own motion or upon the request of a party, issue subpenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. Parties who desire the issuance of a subpoena shall, not less than 5 days