

Social Security Administration

§ 410.692

§ 410.688 Disqualification or suspension of an individual from acting as a representative in proceedings before SSA.

Whenever it appears that an individual has violated any of the rules in § 410.687, or has been convicted of a violation under section 206 of the Social Security Act, or has otherwise refused to comply with the Commissioner's rules or regulations on representation of claimants, SSA may institute proceedings as herein provided to suspend or disqualify that individual from acting as a representative in proceedings before SSA.

[62 FR 38453, July 18, 1997]

§ 410.689 Notice of charges.

The Deputy Commissioner for Programs and Policy, or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the individual. This notice will be delivered to the individual charged, either by certified or registered mail to his last known address or by personal delivery, and will advise the individual charged to file an answer, within 30 days from the date the notice was mailed, or was delivered to him personally, indicating why he should not be suspended or disqualified from acting as a representative before the SSA. This 30-day period may be extended for good cause shown, by the Deputy Commissioner for Programs and Policy, or his or her designee. The answer must be in writing under oath (or affirmation) and filed with the Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, within the prescribed time limitation. If an individual charged does not file an answer within the time prescribed, he shall not have the right to present evidence. However, see § 410.692(g) relating to statements with respect to sufficiency of the evidence upon which the charges are based or challenging the validity of the proceedings.

[36 FR 23760, Dec. 14, 1971, as amended at 37 FR 17709, Aug. 30, 1972; 62 FR 38453, July 18, 1997]

§ 410.690 Withdrawal of charges.

If an answer is filed or evidence is obtained that establishes, to the satisfaction of the Deputy Commissioner for Programs and Policy, or his or her designee, that reasonable doubt exists about whether the individual charged should be suspended or disqualified from acting as a representative before the Administration, the charges may be withdrawn. The notice of withdrawal shall be mailed to the individual charged at his last known address.

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

§ 410.691 Referral to the Deputy Commissioner for Programs and Policy, or his or her designee, for hearing and decision.

If action is not taken to withdraw the charges before the expiration of 15 days after the time within which an answer may be filed, the record of the evidence in support of the charges shall be referred to the Deputy Commissioner for Programs and Policy, or his or her designee, with a request for a hearing and a decision on the charges.

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

§ 410.692 Hearing on charges.

(a) *Hearing officer.* Upon receipt of the notice of charges, the record, and the request for hearing (see § 410.691), the Deputy Commissioner for Programs and Policy, or his or her designee, shall designate an Administrative Law Judge to act as a hearing officer to hold a hearing on the charges. No hearing officer 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 to the hearing may have to the hearing officer who has been designated to conduct the hearing shall be made at the earliest opportunity. The hearing officer shall consider the objection(s) and shall, in his discretion, either proceed with the hearing or withdraw. If the hearing officer withdraws, another hearing officer shall be designated as provided in this section to conduct the

hearing. If the hearing officer does not withdraw, the objecting party may, after the hearing, present his objections to the Appeals Council as reason why he believes the hearing officer's decision should be revised or a new hearing held before another hearing officer.

(b) *Time and place of hearing.* The hearing officer shall notify the individual charged and the Deputy Commissioner for Programs and Policy, or his or her designee, of the Administration, of the time and place for a hearing on the charges. The notice of the hearing shall be mailed to the individual charged at his last known address and to the Deputy Commissioner for Programs and Policy, or his or her designee, not less than 20 days prior to the date fixed for the hearing.

(c) *Change of time and place for hearing.* The hearing officer may change the time and place for the hearing (see paragraph (b) of this section) either on his own motion or at the request of a party for good cause shown. The hearing officer 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 of the decision in the case (see §410.693). Reasonable notice shall be given to the parties of any change in the time or place of hearing or of any adjournment or reopening of the hearing.

(d) *Parties.* A person against whom charges have been preferred under the provisions of §410.688 shall be a party to the hearing. The Deputy Commissioner for Programs and Policy, or his or her designee, of the Administration, shall also be a party to the hearing.

(e) *Subpenas.* Any party to the hearing may request the hearing officer or a member of the Appeals Council to 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. The hearing officer may on his own motion issue subpenas for the same purposes when he deems such action reasonably necessary for the full presentation of the facts. Any party who desires the issuance of a subpoena shall, not less

than 5 days prior to the time fixed for the hearing, file with the hearing officer a written request therefor, designating the witnesses or documents to be produced, and describing the address or location thereof with sufficient particularity to permit such witnesses or documents to be found. The request for a subpoena shall state the pertinent facts which the party expects to establish by such witness or document and whether such facts could be established by other evidence without the use of a subpoena. Subpenas, as provided for above, shall be issued in the name of the Commissioner of Social Security, and the Social Security Administration shall pay the cost of the issuance and the fees and mileage of any witness so subpoenaed, as provided in section 205(d) of the Social Security Act.

(f) *Conduct of the hearing.* The hearing shall be open to the parties and to such other persons as the hearing officer or the individual charged deems necessary or proper. The hearing officer shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters: *Provided, however,* That if the individual charged has filed no answer he shall have no right to present evidence but in the discretion of the hearing officer may appear for the purpose of presenting a statement of his contentions with regard to the sufficiency of the evidence or the validity of the proceedings upon which his suspension or disqualification, if it occurred, would be predicated or, in his discretion, the hearing officer may make or recommend a decision (see §410.693) on the basis of the record referred in accordance with §410.691. If the individual has filed an answer and if the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may at any time prior to the mailing of notice of the decision, or submittal of a recommended decision, reopen the hearing for the receipt of such evidence. The order in which the evidence and the allegations shall be presented and the conduct of the hearing shall be at the discretion of the hearing officer.

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(g) *Evidence.* Evidence may be received at the hearing, subject to the provision herein, even though inadmissible under the rules of evidence applicable to court procedure. The hearing officer shall rule on the admissibility of evidence.

(h) *Witnesses.* Witnesses at the hearing shall testify under oath or affirmation. The witnesses of a party may be examined by such party or by his representative, subject to interrogation by the other party or by his representative. The hearing officer may ask such questions as he deems necessary. He shall rule upon any objection made by either party as to the propriety of any question.

(i) *Oral and written summation.* The parties shall be given, upon request, a reasonable time for the presentation of an oral summation and for the filing of briefs or other written statements of proposed findings of fact and conclusions of law. Copies of such briefs or other written statements shall be filed in sufficient number that they may be made available to any party in interest requesting a copy and to any other party designated by the Appeals Council.

(j) *Record of hearing.* A complete record of the proceedings at the hearing shall be made and transcribed in all cases.

(k) *Representation.* The individual charged may appear in person and he may be represented by counsel or other representative.

(l) *Failure to appear.* If after due notice of the time and place for the hearing, a party to the hearing fails to appear and fails to show good cause as to why he could not appear, such party shall be considered to have waived his right to be present at the hearing. The hearing officer may hold the hearing so that the party present may offer evidence to sustain or rebut the charges.

(m) *Dismissal of charges.* The hearing officer may dismiss the charges in the event of the death of the individual charged.

(n) *Cost of transcript.* On the request of a party, a transcript of the hearing before the hearing officer will be prepared and sent to the requesting party upon the payment of cost, or if the cost is not readily determinable, the esti-

mated amount, thereof, unless for good cause such payment is waived.

[36 FR 23760, Dec. 14, 1971, as amended at 37 FR 17709, Aug. 30, 1972; 62 FR 38454, July 18, 1997]

§ 410.693 Decision by hearing officer.

(a) *General.* As soon as practicable after the close of the hearing, the hearing officer shall issue a decision (or certify the case with a recommended decision to the Appeals Council for decision under the rules and procedures described in §§ 410.657 through 410.659) which shall be in writing and contain findings of fact and conclusions of law. The decision shall be based upon the evidence of record. If the hearing officer finds that the charges have been sustained, he shall either:

(1) Suspend the individual for a specified period of not less than 1 year, nor more than 5 years, from the date of the decision, or

(2) Disqualify the individual from further practice before the Administration until such time as the individual may be reinstated under § 410.699.

A copy of the decision shall be mailed to the individual charged at his last known address and to the Deputy Commissioner for Programs and Policy, or his or her designee, together with notice of the right of either party to request the Appeals Council to review the decision of the hearing officer.

(b) *Effect of hearing officer's decision.* The hearing officer's decision shall be final and binding unless reversed or modified by the Appeals Council upon review (see § 410.697).

(1) If the final decision is that the individual is disqualified from practice before the Administration, he shall not be permitted to represent an individual in a proceeding before the Administration until authorized to do so under the provisions of § 410.699.

(2) If the final decision suspends the individual for a specified period of time, he shall not be permitted to represent an individual in a proceeding before the Administration during the period of suspension unless authorized to do so under the provisions of § 410.699.

[36 FR 23760, Dec. 14, 1971, as amended at 62 FR 38454, July 18, 1997]