

§ 15f.16

§ 15f.16 Although I request a hearing, may I request the ALJ to issue a decision without a hearing?

(a) At any time after the parties have been notified of your hearing request, you may file a request with the ALJ to make a determination based on the written record. With your request, you should file any other arguments or evidence that you wish the ALJ to consider. The agency and OCR will have 35 days after you file your request to file any additional information, arguments, or evidence for the consideration of the ALJ. The ALJ may recommend dismissal of your complaint on the basis of a finding that it is not an eligible complaint; recommend denial of your eligible complaint on the merits; or make a proposed finding of discrimination on your eligible complaint and recommend to award you such relief as would be afforded under the applicable statute or regulation under which the eligible complaint was filed. The ALJ will make a proposed determination on your complaint based on the original complaint, the Section 741 Complaint Request, the OCR report, and any other evidence or written documents filed by the parties. The proposed determination will become the final determination 35 days after it is filed unless you request review of the proposed determination by the ASCR. The ASCR also may review the proposed determination on his or her own initiative. If the ASCR reviews the decision, he or she will allow the parties a reasonable opportunity to file briefs in support of or opposition to the proposed determination, and afterwards will issue a final determination within 35 days after you request review of the proposed determination.

(b) To the maximum extent practicable, a final determination will be made within 180 days of your filing of the Section 741 Complaint Request.

[63 FR 67394, Dec. 4, 1998, as amended at 68 FR 27449, May 20, 2003]

§ 15f.17 What happens before the hearing?

(a) *Do I need to file another answer or pre-hearing brief?* You may file a pre-hearing brief in support of your complaint.

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(b) *Will there be a pre-hearing conference?* The ALJ may hold a pre-hearing conference. If such a conference is to be held, the notice of the pre-hearing conference also will contain a notice to the parties of a time and date for the pre-hearing conference. Pre-hearing conferences normally will be held by telephone. Issues that may be addressed at the pre-hearing conference may include: simplification of the issues; the possibility of obtaining stipulations of fact and of the authenticity of documents; limitation of the number of witnesses; exchange of copies of hearing exhibits; negotiation, compromise or settlement of issues; identification of documents of which official notice will be requested; a schedule for completion of the actions decided upon at the conference; and any other matters that may aid and expedite the conclusion of the proceeding. No transcript of the pre-hearing conference will be made but the ALJ will issue a written memorandum summarizing the results of the pre-hearing conference.

(c) *What else may the ALJ ask for before the hearing?* Prior to the hearing, the ALJ may require each of the parties to furnish any or all of the following: an outline of a party's position with respect to the complaint, the facts upon which the party intends to rely, the legal theories upon which the party intends to rely, copies of or a list of the documents and exhibits which the party anticipates on introducing at the hearing, and a list of anticipated witnesses.

§ 15f.18 May I depose potential witnesses?

(a) A party may request an order from the ALJ to take the testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence. The application for the order must specify the reason and need for taking testimony by deposition.

(b) The time, place, and manner of taking depositions will be as mutually agreed by the parties, or failing agreement, by order of the ALJ.