

Social Security Administration

§ 498.216

(e) The ALJ will make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

(f) There is no right to appeal to the DAB any interlocutory ruling by the ALJ.

[61 FR 65470, Dec. 13, 1996]

§ 498.214 Sanctions.

(a) The ALJ may sanction a person, including any party or attorney, for:

(1) Failing to comply with an order or procedure;

(2) Failing to defend an action; or

(3) Misconduct that interferes with the speedy, orderly or fair conduct of the hearing.

(b) Such sanctions will reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(1) In the case of refusal to provide or permit discovery under the terms of this part, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established;

(2) Prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(3) Striking pleadings, in whole or in part;

(4) Staying the proceedings;

(5) Dismissal of the action; or

(6) Entering a decision by default.

(c) In addition to the sanctions listed in paragraph (b) of this section, the ALJ may:

(1) Order the party or attorney to pay attorney's fees and other costs caused by the failure or misconduct; or

(2) Refuse to consider any motion or other action that is not filed in a timely manner.

[61 FR 65471, Dec. 13, 1996]

§ 498.215 The hearing and burden of proof.

(a) The ALJ will conduct a hearing on the record in order to determine whether the respondent should be found liable under this part.

(b) In civil monetary penalty cases under §§ 498.100 through 498.132:

(1) The respondent has the burden of going forward and the burden of per-

suasion with respect to affirmative defenses and any mitigating circumstances; and

(2) The Inspector General has the burden of going forward and the burden of persuasion with respect to all other issues.

(c) The burden of persuasion will be judged by a preponderance of the evidence.

(d) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause.

(e)(1) A hearing under this part is not limited to specific items and information set forth in the notice letter to the respondent. Subject to the 15-day requirement under § 498.208, additional items or information may be introduced by either party during its case-in-chief, unless such information or items are inadmissible under § 498.217.

(2) After both parties have presented their cases, evidence may be admitted on rebuttal as to those issues presented in the case-in-chief, even if not previously exchanged in accordance with § 498.208.

[61 FR 65471, Dec. 13, 1996]

§ 498.216 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing will be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony (other than expert testimony) may be admitted in the form of a written statement. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner that allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing will be exchanged as provided in § 498.208.

(c) The ALJ will exercise reasonable control over the mode and order of witness direct and cross examination and evidence presentation so as to:

(1) Make the examination and presentation effective for the ascertainment of the truth;

(2) Avoid repetition or needless waste of time; and

(3) Protect witnesses from harassment or undue embarrassment.