

(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 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 OALJ transmits the initial decision to the Secretary and to the parties by submission to OES and, if filing in paper format was permitted by the ALJ, by certified mail, return receipt requested, or by another parcel service with delivery confirmation.

(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; 86 FR 52832, Sept. 23, 2021]

§ 81.42 Petition for review of initial decision.

(a)(1) If a party seeks to obtain the Secretary's review of the initial decision of an ALJ, the party must file a petition for review by submission to OES on behalf of the Office of the Secretary unless the party shows the ALJ good cause why the petition cannot be filed electronically.

(2) If the ALJ permits a party to file a petition for review in paper format, the filing party must file the petition with the ALJ by hand-delivery or regular mail.

(b) A party must file a petition for review not later than 30 days after the date it receives the initial decision. The party is deemed to have received the initial decision on the date the initial decision is uploaded to OES or, if filing in paper format was permitted by the ALJ, the party is deemed to have received the initial decision on the delivery date indicated by the certified mail or parcel delivery records.

(c) Electronically filing a petition to OES for review constitutes service on the other party.

(d) If the ALJ has permitted the petition to be filed in paper format, then—

(1) The party must serve a copy of the petition on the other party on the filing date by hand delivery or by