

## .05 Office of Appeals Responsibilities - Conducting Hearings

**REVISION 07**  
(01/01/09 – 03/31/09)

The following persons must attend the hearing:

- An FAA representative who has knowledge of the case. The representative is the department witness responsible for answering any questions asked by the Hearing Officer.

**NOTE** This may be the EI, or any other designated representative.

- The appellant (or representative or legal counsel).

**NOTE** The appellant may be accompanied to the hearing by anyone they choose.

- A representative of the appropriate program, when the hearing is based on an action taken by Jobs, Tribal NEW, Refugee Job Service Programs, Child Care, or DCSS.

The appellant or representative present the facts and knowledge of the case, and has an opportunity to address the following:

- Present witnesses
- Present evidence
- Advance arguments
- Question or refute testimony or evidence
- Confront and cross-examine witnesses
- Examine all evidence introduced by any party at the hearing

The burden of proof rests with the appellant to prove statements by presenting evidence.

### **EXCEPTION**

DO NOT release confidential information. DO NOT introduce any documents or records in the hearing to which the appellant is not allowed to have access. This includes, but is not limited to, the following:

- Names of individuals who have provided information about the

appellant without the appellant's knowledge

- The nature and status of pending criminal prosecutions
- [IRS Reports](#)
- Information that might be considered psychologically harmful to the appellant or a participant in the appellant's budgetary unit, such as medical information deemed inappropriate for release by a physician

Hearing Officers employed by DES preside over hearings and complete the following, as applicable:

- Administer oaths
- Ensure relevant issues are considered
- Request, receive, and record all evidence necessary to decide the issue
- Regulate and conduct the course of the hearing with due process to ensure an orderly meeting
- Order independent medical assessments or professional evaluations, when necessary

NOTE Before issuing a decision, the Hearing Officer can authorize a special diagnostic evaluation by direct request to the [District Medical Consultant](#) (DMC). The DMC selects an appropriate specialist.

- Hearing Officers may consider new medical evidence without consulting with the DMC. Hearing Officers may request the DMC to provide an evaluation of the new medical evidence, and give a recommendation concerning the appellant's disability and employability status.

NOTE The DMC's opinion is used as expert evidence at the hearing and is not binding on the Hearing Officer.

- Consider relevant medical, social, and vocational reports. Such reports are not binding on the Hearing Officer.

NOTE The appellant's testimony regarding their physical or mental condition is considered.

- Subpoena witnesses or documents requested by FAA or the appellant. Requests for subpoena must be in writing and submitted to the Office of Appeals at least FIVE [workdays\(g\)](#) before the hearing. (See [Office of Appeals Address](#)) Requests must be for materials or witnesses relevant to the issues of the hearing, otherwise the request will be denied. Documents requested must be described in detail, and include the address of custodian of the records. Subpoenas are served by certified mail, return receipt requested.

**NA EXCEPTION**

Submit requests for subpoenas for information to the Office of Appeals within THREE workdays, unless the hearing officer chooses to accept with fewer days notice.

- Create hearing records and render decisions, indicating the reasons and supplying supporting evidence and regulations for the decision.
- Schedule hearings to establish good cause for nonappearance only when requested by the appellant within TEN workdays of the originally scheduled hearing.

**NOTE** The appellant must have notified the hearing office at least five workdays before the scheduled hearing, or demonstrated inability to have appeared, for good cause to be determined.

- Reschedule the hearing when both of the following apply:  
The appellant requests the proceedings to be reopened within TEN workdays from the scheduled hearing.  
Good cause is established for nonappearance at the originally scheduled hearing.
- Notify all involved parties of the rescheduled date as applicable.
- Take action for proper disposition of the hearing as allowed under federal and state laws and regulations.

The Hearing Officer may take the following actions when good cause is shown on their own motion or at request of any interested party:

- Disqualify themselves
- Continue the hearing at a future time
- Reopen a hearing to consider additional evidence before a decision becomes final