

I-2-6-10. Hearing Procedures — Foreign Language Interpreters

Last Update: 10/6/15 (Transmittal I-2-153)

A. General

Prior to the hearing, the administrative law judge (ALJ) will determine whether an interpreter is necessary at the hearing, as described in Hearings, Appeals and Litigation Law (HALLEX) manual I-2-1-70 A. If, before or during the hearing, the claimant or appointed representative requests an interpreter or the claimant demonstrates the need for an interpreter, the ALJ will ensure a qualified interpreter is present at the hearing.

NOTE 1: If a claimant or appointed representative withdraws a prior request for an interpreter, either before or at the hearing, the ALJ may proceed without an interpreter if, based on the information provided and the facts of the case, the ALJ finds an interpreter is not necessary for a full and fair hearing. Any such withdrawal must be in a writing associated with the record (and exhibited) or must be obtained on the record during the hearing.

If it becomes clear at the hearing that a claimant has difficulty understanding or communicating in English but did not previously request or indicate the need for an interpreter, the ALJ will stop the proceedings until he or she can ensure that a qualified interpreter (see HALLEX I-2-1-70 B) is present through the remainder of the hearing. Similarly, if the ALJ determines that the testimony of a witness with limited proficiency in English is needed to inquire fully into the issues, the ALJ will ensure that an interpreter is present during that witness' oath and testimony. Depending on the circumstances, the ALJ may adjourn the hearing proceedings temporarily to call the Telephone Interpreter Services (TIS) and request a telephone interpreter. (See further instructions in HALLEX I-2-1-70 C.)

NOTE 2: The criteria in HALLEX I-2-1-70 and I-2-6-10 regarding the need for an interpreter at a hearing is distinct from vocational factors assessed during a hearing. Using an interpreter at the hearing does not mean that an ALJ must find that a claimant has an "inability to communicate in English" as a vocational factor under 20 CFR 404.1564(b)(5) and 416.964(b)(5).

B. Certification for the Record

An ALJ need not certify a contract interpreter hired under the language interpreter services blanket purchase agreement, or an interpreter from TIS. In all other circumstances, the ALJ must certify the interpreter on the record, either during the hearing or in writing.

To certify on the record during the hearing, the ALJ will verify the interpreter's identity and require the interpreter to certify "under penalty of perjury" that:

- He or she has no prior relationship to the person testifying;
- He or she is not acting as the legal representative for the person testifying; and
- He or she will accurately interpret the questions asked and the answers given to the best of his or her ability.

If the ALJ certifies the interpreter in writing, the ALJ may use Form SSA-795, Statement of Claimant or Other Person, or another written statement with the following information:

- "I am acting as an interpreter for (individual's name) to perform the specific function of providing accurate interpretation between (individual's name) and the ALJ. I solemnly (swear or affirm) that I will accurately interpret the questions asked and the answers given in this case to the best of my ability, under penalty of perjury";
- Interpreter's name, address, and telephone number;
- A statement that the interpreter has no prior relationship to the person testifying, nor is he or she acting as the claimant's legal representative;
- Any relevant comments that the interpreter wishes to include;
- Any relevant comments that the ALJ wishes to document over the interpreter's signature; and
- The interpreter's signature.

If an interpreter refuses to provide the required certification, or the ALJ doubts an interpreter's qualifications or suspects fraudulent activity, the ALJ will adjourn or postpone the hearing until the services of an acceptable interpreter are obtained.

NOTE: If the ALJ suspects fraudulent activity involving an interpreter, the ALJ will also refer the matter to the Office of the Inspector General using the instructions in HALLEX I-1-3-9.

C. Verbatim Interpretation

Prior to obtaining testimony, the ALJ will direct the interpreter to interpret the questions and answers verbatim without changing the original meaning of the questions or answers. The ALJ will also instruct the interpreter not to add personal comments to either the questions or the answers.

When obtaining testimony, the ALJ will direct all questions and comments to the person providing testimony, not to the interpreter. The ALJ will phrase questions and comments as simply as possible, and should not use idiomatic or slang expressions when questioning hearing participants.

If, while translating, an interpreter changes the form of the question to the third person (that is, uses "he" or "she" instead of "I"), the ALJ will instruct the interpreter, on the record, to correct the interpretation and caution the interpreter against the practice.

D. Difficulties With Interpretation

If the ALJ determines that the claimant or the witness is having difficulty understanding the interpretation, or the claimant or the witness objects to

the interpretation, the ALJ must determine whether the claimant is receiving a full and fair hearing.

- If the ALJ concludes the claimant is receiving a full and fair hearing, the ALJ will note the objection on the record, proceed with the hearing, and address the objection in the decision.
- If the ALJ concludes the claimant is not receiving a full and fair hearing, the ALJ will adjourn or postpone the hearing until the services of an acceptable interpreter are obtained. Depending on the circumstances, the ALJ may adjourn temporarily to call TIS and request a telephone interpreter.

