

Title:
Scheduling, Adjourning and Conduct of Administrative Hearings

Regulation Text:

§317.1 Background

Whereas, Sections 74 and 374 of the Retirement and Social Security Law direct that the Comptroller, upon timely receipt of a written demand, shall hold a hearing to review and redetermine an application for retirement allowance or other benefit provided by the Retirement and Social Security Law; and

Whereas, All such hearings should be conducted in such manner as to protect equally the interests of the applicant and of the retirement system, it being the primary purpose of any such hearing to establish a fair and adequate record for the proper disposition of the application; and

Whereas, In recent years there has been a significant increase in the number of demands for such hearings, and as a result many hearings are held each week throughout the State; and

Whereas, The volume of hearings requires that in the interest of justice reasonable regulations should be promulgated to establish the rules and procedures under which such hearings will be held; it is, therefore, hereby

Determined That the following rules shall be promulgated to determine the procedures which shall be observed and rules which shall be followed for the scheduling of and conduct of such hearings.

§317.2 Notice of hearings

(a) After receipt of a timely written demand for a hearing and redetermination of an application, the retirement system shall notify the applicant, other parties and all counsel, if any, when a hearing on the application will be held.

(b) All notices of hearings shall specifically and plainly state the following:

- (1) the purpose of the hearing;
- (2) the time, place and date of the hearing;
- (3) the right of the applicant to be represented by counsel;
- (4) the procedure for obtaining an adjournment; and
- (5) the consequences of the applicant's failure to appear at a scheduled hearing.

(c) Notices shall be mailed to the applicant, other parties and all counsel not less than three weeks before the date of the scheduled hearing.

(d) The statement of issue in the notice of hearing is intended for informational purposes. Issues may be raised or withdrawn during the course of the proceeding.

§317.3 Conduct of hearings

(a) All hearings shall be conducted in an orderly manner. A hearing officer duly designated by the Comptroller shall preside. A party may represent himself or herself, or be represented by an attorney licensed to practice law in the state of New York.

(b) All parties may present witnesses on their behalf. All witnesses shall testify under oath or by affirmation, and shall be subject to cross-examination by the other parties. The hearing officer has the discretion to question witnesses.

- (c) A record of the proceedings shall be made and kept, and a copy shall be furnished to all parties and the hearing officer at the expense of the retirement system.
- (d) All costs incurred in retaining counsel and presenting expert witnesses shall be the sole responsibility of the applicant or party.
- (e) Motions may be made to the hearing officer at any time during the proceeding.

§317.4 Initial hearings--presentation of applicant's case

- (a) The term “initial hearing” shall be defined as the first scheduled hearing at which the official record of the case is opened by the hearing officer.
- (b) At the initial hearing the applicant must be prepared to present all evidence and witnesses in support of his/her claim.
- (c) Rebuttal evidence shall not be permitted.

§317.5 Adjournment before a scheduled hearing

- (a) The retirement system may adjourn or cancel a hearing at its discretion when it is not possible for the hearing to proceed as scheduled.
- (b) A request for an adjournment by an applicant or a party other than the retirement system before a scheduled hearing must be:
 - (1) in writing and
 - (2) received by the retirement system at least three business days before a scheduled hearing.
- (c) An adjournment before any hearing shall be granted only by the retirement system.
- (d) The applicant or a party other than the retirement system shall be granted only one adjournment as of right or without the necessity of providing an explanation.
- (e) A second adjournment may be granted for cause.
 - (1) Cause is defined as unusual, unexpected, or unavoidable circumstances beyond the control of the applicant or the other party, such as: a death in the immediate family, serious illness, unavoidable temporary inability to obtain counsel, or inclement weather that prevents all reasonable travel. It does not include any event that can be prevented or mitigated by the timely taking of reasonable action.

§317.6 Scheduled Hearings and Adjournment Requests at a Hearing.

- (a) The applicant and party other than the retirement system shall present its case at the initial hearing.
 - (1) In the event that a witness or evidence is not available at the time a hearing is scheduled, the applicant shall request an adjournment before the hearing as provided in §317.5.
 - (2) The hearing officer may in his or her discretion, and upon motion by the applicant or party, grant a continuance for additional witnesses to testify.
 - i) The applicant or party granted the continuance must advise the retirement system within 45 days of the availability of the additional expert witness or the applicant or party’s case will be deemed closed.
 - ii) In the event that the retirement system is unable to schedule a hearing based on the availability dates provided by the

applicant or other party, the retirement system will provide a written request for additional dates of availability.

iii) The hearing officer has the discretion during a hearing to grant an adjournment of a hearing for cause, as defined by §317.5(e) (1).

(b) The applicant or party other than the retirement system may waive appearance at the hearing.

(1) Written requests to waive appearance must be received by the retirement system at least three business days prior to the scheduled hearing.

§317.7 Failure of applicant to appear

(a) The failure of the applicant or his or her attorney to appear at an initial hearing without a timely and proper adjournment pursuant to section 317.5 of this Part will result in a dismissal of the application for failure to prosecute.

(b) After an initial hearing is held, failure to appear without an adjournment or waiver of appearance will result in the applicant's case being closed. The retirement system reserves the right to present its case.

§317.8 Presentation of retirement system's case

(a) If the retirement system determines at the conclusion of the applicant's case that it should be necessary to conduct a subsequent hearing or hearings for the retirement system's witnesses, a hearing will be scheduled by the retirement system as soon as practicable at a time and place convenient to the retirement system's witness.

(b) At the conclusion of the retirement system's case, the hearing proceeding will be closed.

(c) After all parties have rested, and received a copy of the record; the parties may submit a memorandum of law, at the discretion of the hearing officer.

§317.9 Discovery of medical records

(a) Upon the request of the applicant, the retirement system shall provide the report(s) of the physician(s) who examined the applicant at the request of the retirement system. The retirement system will also provide, at the applicant's request and expense, the records which were considered by the retirement system at the time of the initial determination of the disability application.

(b) The applicant shall provide the retirement system with a copy of all additional reports and documents to be offered into evidence, the reports and records (if different) of any medical witnesses testifying on the applicant, and the names of all witnesses, within the time frame specified by the retirement system.