

### § 32.5 Hearing.

(a) *In general.* Upon timely written request of the debtor, the Secretary shall provide a hearing, which at the Department's option may be oral or written, concerning the existence or amount of the debt, or the terms of a repayment schedule established other than by written agreement under § 32.4(a)(3)(ii).

(b) *Request for hearing.* (1) The request for a hearing must be signed by the debtor, state each issue being disputed, and identify and explain with reasonable specificity all facts and evidence that the debtor believes supports the debtor's position. Supporting documentation identified by the debtor should be attached to the request.

(2) *Effect of timely request.* Subject to paragraph (j) of this section, if the debtor's written request is received on or before the 15th business day following the mailing of the written notice required under this part, a withholding order shall not be issued under § 32.6 until the debtor has been provided the requested hearing and a decision in accordance with paragraphs (g) and (h) of this section has been rendered.

(3) *Failure to timely request a hearing.* If the debtor's written request is received after the 15th business day following the mailing of the written notice required under this part, the Secretary shall provide a hearing to the debtor. However, the Secretary shall not delay the issuance of a withholding order unless the Secretary determines that the delay in submitting such request was caused by factors beyond the control of the debtor, or the Secretary receives information that the Secretary determines justifies a delay or cancellation of the withholding order.

(c) *Oral hearing.* (1) For purposes of this section, a debtor shall be provided a reasonable opportunity for an oral hearing when the hearing official determines that the issues in dispute cannot be resolved by review of the documentary evidence, such as when the validity of the claim turns on the issue of credibility or veracity.

(2) If the hearing official determines an oral hearing is appropriate, the hearing official will establish the date, time and location of the hearing. At the debtor's option, the oral hearing may be conducted in person or by telephone conference. The hearing official will notify the debtor of the date, time, and in the case of an in-person hearing, the location of the hearing. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(d) *Paper hearing.* (1) If the hearing official determines an oral hearing is not required by this section, the hearing official shall afford the debtor a paper hearing, that is, the issues in dispute will be decided based upon a review of the written record.

(2) The hearing official shall notify the debtor of the deadline for the submission of additional evidence if necessary for a review of the record.

(e) *Burden of proof.* (1) The Secretary has the initial burden of proving the existence or amount of the debt.

(2) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount is incorrect. When challenging the terms of a repayment schedule, the debtor must establish by a preponderance of the evidence that the terms of the repayment schedule are unlawful, would cause financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(f) *Record.* The hearing official shall maintain a summary record of any hearing provided under this part. A hearing is not required to be a formal evidentiary-type hearing, but witnesses who testify in an oral hearing must do so under oath or affirmation.

(g) *Date of decision.* (1) The hearing official shall issue a written decision, as soon as practicable, but no later than sixty (60) days after the date on which the request for the hearing was received by the Department.

(2) If the hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(i) A withholding order may not be issued until the hearing is held and a decision is rendered; or

(ii) A withholding order previously issued to the debtor's employer must be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(h) *Content of decision.* The written decision shall include:

(1) A summary of the facts presented;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedule, if applicable.

(i) *Final agency action.* The hearing official's decision will be the final agency action for the purposes of judicial review under the Administrative Procedure Act. 5 U.S.C. 701 *et seq.*

(j) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.