

(2) Factors evaluated to determine the impact of the change include, but are not limited to, the effect on processing other scheduled hearings, potential delays in rescheduling the hearing, and whether any prior changes were granted the enrollee.

(3) Examples of other circumstances an enrollee might give for requesting a change in the time or place of the hearing include, but are not limited to, the following:

(i) The enrollee has attempted to obtain a representative but needs additional time.

(ii) The enrollee's representative was appointed within 10 calendar days of the scheduled hearing for non-expedited hearings (or 2 calendar days for expedited hearings) and needs additional time to prepare for the hearing.

(iii) The enrollee's representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing.

(iv) A witness who will testify to facts material to an enrollee's case is unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained.

(v) Transportation is not readily available for an enrollee to travel to the hearing.

(vi) The enrollee is unrepresented, and is unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language).

(h) *Effect of rescheduling hearing.* If a hearing is postponed at the request of the enrollee for any of the above reasons, the time between the originally scheduled hearing date and the new hearing date is not counted toward the adjudication deadline as specified in § 423.2016.

(i) *An enrollee's request for an in-person hearing.* (1) If an enrollee objects to a video-teleconferencing hearing or to the ALJ's offer to conduct a hearing by telephone, the enrollee must notify the ALJ at the earliest possible opportunity before the time set for the hearing and request an in-person hearing.

(2) The enrollee must state the reason for the objection and state the time or place he or she wants the hearing to be held.

(3) The request must be in writing except for an expedited hearing for which the request may be provided orally. The ALJ must document all oral objections to an expedited video-teleconferencing or telephone hearing in writing and maintain the documentation in the case files.

(4) When an enrollee's request for an in-person hearing is granted, the ALJ must issue a decision within the adjudicatory timeframe as specified in § 423.2016 (including any applicable extensions provided in this subpart), unless the enrollee requesting the hearing agrees to waive such adjudication timeframe in writing.

(5) The ALJ may grant the request, with the concurrence of the Managing Field Office ALJ, upon a finding of good cause and will reschedule the hearing for a time and place when the enrollee may appear in person before the ALJ.

§ 423.2022 Notice of a hearing before an ALJ.

(a) *Issuing the notice.* (1) After the ALJ sets the time and place of the hearing, the notice of the hearing will be mailed or otherwise transmitted to the enrollee and other potential participants, as provided in § 423.2020(c) at their last known addresses, or given by personal service, unless the enrollee or other potential participant indicates in writing that he or she does not wish to receive this notice.

(2) The notice is mailed or served at least 20 calendar days before the hearing, except for expedited hearings where written notice is mailed or served at least 3 calendar days before the hearing. For expedited hearings, the ALJ may orally provide notice of the hearing to the enrollee and other potential participants but oral notice must be followed by an equivalent written notice within 1 calendar day of the oral notice.

(b) *Notice information.* (1) The notice of hearing contains a statement of the specific issues to be decided and will inform the enrollee that he or she may designate a person to represent him or her during the proceedings.

(2) The notice must include an explanation of the procedures for requesting a change in the time or place of the

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hearing, a reminder that, if the enrollee fails to appear at the scheduled hearing without good cause, the ALJ may dismiss the hearing request, and other information about the scheduling and conduct of the hearing.

(3) The enrollee will also be told if his or her appearance or that of any other witness is scheduled by video-conferencing, telephone, or in person. If the ALJ has scheduled the enrollee to appear at the hearing by video-conferencing, the notice of hearing will advise that the scheduled place for the hearing is a video-conferencing site and explain what it means to appear at the hearing by video-conferencing.

(4) The notice advises the enrollee that if he or she objects to appearing by video-conferencing or telephone, and wishes instead to have his or her hearing at a time and place where he or she may appear in person before the ALJ, he or she must follow the procedures set forth at § 423.2020(i) for notifying the ALJ of his or her objections and for requesting an in-person hearing.

(c) *Acknowledging the notice of hearing.* (1) If the enrollee or his or her representative does not acknowledge receipt of the notice of hearing, the ALJ hearing office attempts to contact the enrollee for an explanation.

(2) If the enrollee states that he or she did not receive the notice of hearing, an amended notice is sent to him or her by certified mail or, if available, fax or e-mail. See § 423.2052 for the procedures the ALJ follows in deciding if the time or place of a scheduled hearing will be changed if an enrollee does not respond to the notice of hearing).

§ 423.2024 Objections to the issues.

(a) If an enrollee objects to the issues described in the notice of hearing, he or she must notify the ALJ in writing at the earliest possible opportunity before the time set for the hearing, and no later than 5 calendar days before the hearing, except for expedited hearings in which the enrollee must submit written or oral notice of objection no later than 2 calendar days before the hearing. The ALJ hearing office must document all oral objections in writing

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and maintain the documentation in the case files.

(b) The enrollee must provide the reasons for his or her objections.

(c) The ALJ makes a decision on the objections either in writing or at the hearing.

§ 423.2026 Disqualification of the ALJ.

(a) An ALJ may not conduct a hearing if he or she is prejudiced or partial to the enrollee or has any interest in the matter pending for decision.

(b) If an enrollee objects to the ALJ who will conduct the hearing, the enrollee must notify the ALJ within 10 calendar days of the date of the notice of hearing, except for expedited hearings in which the enrollee must submit written or oral notice no later than 2 calendar days after the date of the notice of hearing. The ALJ must document all oral objections in writing and maintain the documentation in the case files. The ALJ considers the enrollee's objections and decides whether to proceed with the hearing or withdraw.

(c) If the ALJ withdraws, another ALJ will be appointed to conduct the hearing. If the ALJ does not withdraw, the enrollee may, after the ALJ has issued an action in the case, present his or her objections to the MAC in accordance with § 423.2100 through § 423.2130. The MAC would then consider whether the hearing decision should be revised or a new hearing held before another ALJ.

§ 423.2030 ALJ hearing procedures.

(a) *General rule.* A hearing is open to the enrollee and to other persons the ALJ considers necessary and proper.

(b) *At the hearing.* The ALJ fully examines the issues, questions the enrollee and other witnesses, and may accept documents that are material to the issues consistent with § 423.2018.

(c) *Missing evidence.* The ALJ may also stop the hearing temporarily and continue it at a later date if he or she believes that there is material evidence missing at the hearing.

(d) *Reopen the hearing.* The ALJ may reopen the hearing at any time before he or she mails a notice of the decision in order to receive new and material evidence pursuant to § 423.1986. The