

§ 405.1022

42 CFR Ch. IV (10–1–13 Edition)

the ALJ must issue a decision within the adjudication timeframe specified in § 405.1016 (including any applicable extensions provided in this subpart) unless the party 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 party may appear in person before the ALJ.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37704, June 30, 2005; 74 FR 65335, Dec. 9, 2009]

§ 405.1022 Notice of a hearing before an ALJ.

(a) *Issuing the notice.* After the ALJ sets the time and place of the hearing, notice of the hearing will be mailed to the parties and other potential participants, as provided in § 405.1020(c) at their last known address, or given by personal service. The ALJ is not required to send a notice of hearing to a party who indicates in writing that it does not wish to receive this notice. The notice is mailed or served at least 20 calendar days before the hearing.

(b) *Notice information.* (1) The notice of hearing contains a statement of the specific issues to be decided and will inform the parties that they may designate a person to represent them during the proceedings.

(2) The notice must include an explanation of the procedures for requesting a change in the time or place of the hearing, a reminder that, if the appellant 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 appellant will also be told if his or her appearance or that of any other party or witness is scheduled by VTC, telephone, or in person. If the ALJ has scheduled the appellant or other party to appear at the hearing by VTC, the notice of hearing will advise that the scheduled place for the hearing is a VTC site and explain what it means to appear at the hearing by VTC.

(4) The notice advises the appellant or other parties that if they object to appearing by VTC or telephone, and wish instead to have their hearing at a time and place where they may appear in person before the ALJ, they must follow the procedures set forth at § 405.1020(i) for notifying the ALJ of their objections and for requesting an in-person hearing.

(c) *Acknowledging the notice of hearing.* (1) If the appellant, any other party to the reconsideration, or their representative does not acknowledge receipt of the notice of hearing, the ALJ hearing office attempts to contact the party for an explanation.

(2) If the party 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 e-mail, if available. (See § 405.1052 for the procedures the ALJ follows in deciding if the time or place of a scheduled hearing will be changed if a party does not respond to the notice of hearing).

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65335, Dec. 9, 2009]

§ 405.1024 Objections to the issues.

(a) If a party 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.

(b) The party must state the reasons for his or her objections and send a copy of the objections to all other parties to the appeal.

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

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65335, Dec. 9, 2009]

§ 405.1026 Disqualification of the ALJ.

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

(b) If a party objects to the ALJ who will conduct the hearing, the party must notify the ALJ within 10 calendar