

## § 423.1036

(c) *Effect of prehearing conference.* The agreements and stipulations entered into at the prehearing conference are binding on all parties, unless a party presents facts that, in the opinion of the ALJ, would make an agreement unreasonable or inequitable.

### § 423.1036 Time and place of hearing.

(a) The ALJ fixes a time and place for the hearing and gives the parties written notice at least 10 calendar days before the scheduled date.

(b) The notice informs the parties of the general and specific issues to be resolved at the hearing.

### § 423.1038 Change in time and place of hearing.

(a) The ALJ may change the time and place for the hearing either on his or her own initiative or at the request of a party for good cause shown, or may adjourn or postpone the hearing.

(b) The ALJ may reopen the hearing for receipt of new evidence at any time before mailing the notice of hearing decision.

(c) The ALJ gives the parties reasonable notice of any change in time or place or any adjournment or reopening of the hearing.

### § 423.1040 Joint hearings.

When two or more affected parties have requested hearings and the same or substantially similar matters are at issue, the ALJ may, if all parties agree, fix a single time and place for the prehearing conference or hearing and conduct all proceedings jointly. If joint hearings are held, a single record of the proceedings is made and a separate decision issued with respect to each affected party.

### § 423.1042 Hearing on new issues.

(a) *Basic rules.* (1) Within the time limits specified in paragraph (b) of this section, the ALJ may, at the request of either party, or on his or her own motion, provide a hearing on new issues that impinge on the rights of the affected party.

(2) The ALJ may consider new issues even if CMS has not made initial determinations on them, and even if they arose after the request for hearing was filed or after a prehearing conference.

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(3) The ALJ may give notice of hearing on new issues at any time after the hearing request is filed and before the hearing record is closed.

(b) *Notice and conduct of hearing on new issues.* (1) Unless the affected party waives its right to appear and present evidence, notice of the time and place of hearing on any new issue will be given to the parties in accordance with 423.1036.

(2) After giving notice, the ALJ will, except as provided in paragraph (c) of this section, proceed to hearing on new issues in the same manner as on an issue raised in the request for hearing.

(c) *Remand to CMS.* At the request of either party, or on his or her own motion, in lieu of a hearing under paragraph (b) of this section, the ALJ may remand the case to CMS for consideration of the new issue and, if appropriate, a determination. If necessary, the ALJ may direct CMS to return the case to the ALJ for further proceedings.

### § 423.1044 Subpoenas.

(a) *Basis for issuance.* The ALJ, upon his or her own motion or at the request of a party, may issue subpoenas if they are reasonably necessary for the full presentation of a case.

(b) *Timing of request by a party.* The party must file a written request for a subpoena with the ALJ at least 5 calendar days before the date set for the hearing.

(c) *Content of request.* The request must:

(1) Identify the witnesses or documents to be produced;

(2) Describe their addresses or location with sufficient particularity to permit them to be found; and

(3) Specify the pertinent facts the party expects to establish by the witnesses or documents, and indicate why those facts could not be established without use of a subpoena.

(d) *Method of issuance.* Subpoenas are issued in the name of the Secretary.

### § 423.1046 Conduct of hearing.

(a) *Participants in the hearing.* The hearing is open to the parties and their representatives and technical advisors,