

§ 423.2018

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hearing, the ALJ must issue a written decision, dismissal order or remand, as expeditiously as the enrollee's health condition requires, but no later than the end of the 10 calendar day period beginning on the date the request for hearing is received by the entity specified in the IRE's written notice of reconsideration, unless the 10 calendar day period has been extended as provided in this subpart.

(ii) The adjudication period specified in paragraph (b)(5)(i) of this section begins on the date that a timely provided request for hearing is received by the entity specified in the IRE's reconsideration, or, if it is not timely provided, the date that the ALJ grants any extension to the filing deadline.

§ 423.2018 Submitting evidence before the ALJ hearing.

(a) *All hearings.* An enrollee may submit any written evidence that he or she wishes to have considered at the hearing.

(1) An ALJ will not consider any evidence submitted regarding a change in condition of an enrollee after the appealed coverage determination was made.

(2) An ALJ will remand a case to the Part D IRE where an enrollee wishes evidence on his or her change in condition after the coverage determination to be considered.

(b) *Non-expedited hearings.* (1) Except as provided in this paragraph, a represented enrollee must submit all written evidence he or she wishes to have considered at the hearing with the request for hearing or within 10 calendar days of receiving the notice of hearing.

(2) If a represented enrollee submits written evidence later than 10 calendar days after receiving the notice of hearing, the period between the time the evidence was required to have been submitted and the time it is received is not counted toward the adjudication deadline specified in § 423.2016.

(3) The requirements of this subsection do not apply to unrepresented enrollees.

(c) *Expedited hearings.* (1) Except as provided in this section, an enrollee must submit all written evidence he or she wishes to have considered at the hearing with the request for hearing or

within 2 calendar days of receiving the notice of hearing.

(2) If an enrollee submits written evidence later than 2 calendar days after receiving the notice of hearing, the period between the time the evidence was required to have been submitted and the time it is received is not counted toward the adjudication deadline specified in § 423.2016.

(d) The requirements of paragraphs (b) and (c) of this section do not apply to oral testimony given at a hearing.

§ 423.2020 Time and place for a hearing before an ALJ.

(a) *General.* Consistent with § 423.1972(b), the ALJ sets the time and place for the hearing, and may change the time and place, if necessary.

(b) *Determining how appearances are made.* (1) The ALJ will direct that the appearance of an individual be conducted by video-teleconferencing if the ALJ finds that video-teleconferencing technology is available to conduct the appearance.

(2) The ALJ may also offer to conduct a hearing by telephone if the request for hearing or administrative record suggests that a telephone hearing may be more convenient for the enrollee.

(3) The ALJ, with the concurrence of the Managing Field Office ALJ, may determine that an in-person hearing should be conducted if—

(i) The video-teleconferencing technology is not available; or

(ii) Special or extraordinary circumstances exist.

(c) *Notice of hearing.* (1) The ALJ sends a notice of hearing to the enrollee, the Part D plan sponsor that issued the coverage determination, and the IRE that issued the reconsideration, advising them of the proposed time and place of the hearing.

(2) The notice of hearing will require the enrollee (and any potential participant from CMS, the IRE, and/or the Part D plan who has requested to participate in the hearing consistent with § 423.2010) to reply to the notice by:

(i) Acknowledging whether they plan to attend the hearing at the time and place proposed in the notice of hearing; or

(ii) Objecting to the proposed time and/or place of the hearing.

(d) *An enrollee's right to waive a hearing.* An enrollee may also waive the right to a hearing and request that the ALJ issue a decision based on the written evidence in the record.

(1) As specified in § 423.2000, the ALJ may require the enrollee to attend a hearing if it is necessary to decide the case.

(2) If the ALJ determines that it is necessary to obtain testimony from a person other than the enrollee, he or she may still hold a hearing to obtain that testimony, even if the enrollee has waived the right to appear. In those cases, the ALJ would give the enrollee the opportunity to appear when the testimony is given but may hold the hearing even if the enrollee decides not to appear.

(e) *An enrollee's objection to time and place of hearing.* (1) If an enrollee objects to the time and place of the hearing, the enrollee must notify the ALJ at the earliest possible opportunity before the time set for the hearing.

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

(3) The objection must be in writing except for an expedited hearing when the objection may be provided orally. The ALJ must document all oral objections to the time and place of an expedited hearing in writing and maintain the documentation in the case files.

(4) The ALJ may change the time or place of the hearing if the enrollee has good cause. (Section 423.2052(a)(2) provides the procedures the ALJ follows when an enrollee does not respond to a notice of hearing and fails to appear at the time and place of the hearing.)

(f) *Good cause for changing the time or place.* The ALJ can find good cause for changing the time or place of the scheduled hearing and reschedule the hearing if the information available to the ALJ supports the enrollee's contention that—

(1) The enrollee or his or her representative is unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing; or

(3) Good cause exists as set forth in paragraph (g) of this section.

(g) *Good cause in other circumstances.* (1) In determining whether good cause exists in circumstances other than those set forth in paragraph (f) of this section, the ALJ considers the enrollee's reason for requesting the change, the facts supporting the request, and the impact of the change on the efficient administration of the hearing process.

(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

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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 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-teleconferencing, telephone, or in person. If the ALJ has scheduled the enrollee to appear at the hearing by video-teleconferencing, the notice of hearing will advise that the scheduled place for the hearing is a video-teleconferencing site and explain what it means to appear at the hearing by video-teleconferencing.

(4) The notice advises the enrollee that if he or she objects to appearing by video-teleconferencing 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).