

(4) If the ALJ finds there is good cause for missing the deadline, the time period for filing the hearing request will be extended. To determine whether good cause for late filing exists, the ALJ uses the standards set forth in §§ 405.942(b)(2) and (b)(3) of this chapter.

(5) If a request for hearing is not timely filed, the adjudication period in § 423.2016 begins the date the ALJ grants the request to extend the filing deadline.

**§ 423.2016 Timeframes for deciding an Appeal before an ALJ.**

(a) *Hearings.* (1) When a request for an ALJ hearing is filed after an IRE has issued a written reconsideration, the ALJ must issue a decision, dismissal order, or remand, as appropriate, no later than the end of the 90 calendar day period beginning on the date the request for hearing is received by the entity specified in the IRE's notice of reconsideration, unless the 90 calendar day period has been extended as provided in this subpart.

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

(b) *Expedited hearings.* (1) Standard for expedited hearing. The ALJ must provide an expedited hearing decision if the appeal involves an issue specified in § 423.566(b), but is not solely a request for payment of Part D drugs already furnished, and the enrollee's prescribing physician or other prescriber indicates, or the ALJ determines that applying the standard timeframe for making a decision may seriously jeopardize the enrollee's life, health or ability to regain maximum function. The ALJ may consider this standard as met if a lower level adjudicator has granted a request for an expedited hearing.

(2) Grant of a request. If the ALJ grants a request for expedited hearing, the ALJ must—

(i) Make the decision to grant an expedited hearing within 5 calendar days

of receipt of the request for expedited hearing;

(ii) Give the enrollee prompt oral notice of this decision; and

(iii) Subsequently send to the enrollee at his or her last known address and to the Part D plan sponsor written notice of the decision. This notice may be provided within the written notice of hearing.

(3) Denial of a request. If the ALJ denies a request for expedited hearing, the ALJ must—

(i) Make this decision within 5 calendar days of receipt of the request for expedited hearing;

(ii) Give the enrollee prompt oral notice of the denial that informs the enrollee of the denial and explains that the ALJ will process the enrollee's request using the 90 calendar day timeframe for non-expedited ALJ hearings; and

(iii) Subsequently send to the enrollee at his or her last known address and to the Part D plan sponsor an equivalent written notice of the decision within 3 calendar days after the oral notice.

(4) A decision on a request for expedited hearing may not be appealed.

(5) Timeframe for adjudication. (i) If the ALJ accepts a request for expedited 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.

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(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