§ 405.1014 Request for an ALJ hearing.

(a) Content of the request. The request for an ALJ hearing must be made in writing. The request must include all of the following—

(1) The name, address, and Medicare health insurance claim number of the beneficiary whose claim is being appealed.

(2) The name and address of the appellant, when the appellant is not the beneficiary.

(3) The name and address of the designated representatives if any.

(4) The document control number assigned to the appeal by the QIC, if any.

(5) The dates of service.

(6) The reasons the appellant disagrees with the QIC’s reconsideration or other determination being appealed.

(7) A statement of any additional evidence to be submitted and the date it will be submitted.

(b) When and where to file. The request for an ALJ hearing after a QIC reconsideration must be filed—

(1) Within 60 calendar days from the date the party receives notice of the QIC’s reconsideration; and

(2) With the entity specified in the QIC’s reconsideration. The appellant must also send a copy of the request for hearing to the other parties. Failure to do so will toll the ALJ’s 90 calendar day adjudication deadline until all parties to the QIC reconsideration receive notice of the requested ALJ hearing. If the request for hearing is timely filed with an entity other than the entity specified in the QIC’s reconsideration, the ALJ hearing office must notify the appellant of the date of receipt of the request and the commencement of the 90 calendar day adjudication time frame.

(c) Extension of time to request a hearing. (1) If the request for hearing is not filed within 60 calendar days of receipt of the QIC’s reconsideration, an appellant may request an extension for good cause (See §§ 405.942(b)(2) and 405.942(b)(3)).

(2) Any request for an extension of time must be in writing, give the reasons why the request for a hearing was not filed within the stated time period, and must be filed with the entity specified in the notice of reconsideration.

(3) If the ALJ finds there is good cause for late filing exists, the ALJ uses the standards set forth in §§ 405.942(b)(2) and 405.942(b)(3).

(d) If a request for hearing is not timely filed, the adjudication period in § 405.1016 begins the date the ALJ grants the request to extend the filing deadline.

§ 405.1016 Time frames for deciding an appeal before an ALJ.

(a) When a request for an ALJ hearing is filed after a QIC reconsideration must be filed—

(1) Within 60 calendar days from the date the party receives notice of the QIC’s reconsideration; and

(2) With the entity specified in the QIC’s reconsideration. The appellant must also send a copy of the request for hearing to the other parties. Failure to do so will toll the ALJ’s 90 calendar day adjudication deadline until all parties to the QIC reconsideration receive notice of the requested ALJ hearing. If the request for hearing is timely filed with an entity other than the entity specified in the QIC’s reconsideration, the ALJ hearing office must notify the appellant of the date of receipt of the request and the commencement of the 90 calendar day adjudication time frame.

(b) 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 QIC’s reconsideration, or, if it is not timely filed, the date that the ALJ grants any extension to the filing deadline.

(c) When an appeal is escalated to the ALJ level because the QIC has not issued a reconsideration determination within the period specified in § 405.970, the ALJ must issue a decision, dismissal order, or remand to the QIC, 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 QIC’s notice of reconsideration, unless the 90 calendar day period has been extended as provided in this subpart.
office, unless the 180 calendar day period is extended as provided in this subpart.

d) When CMS or its contractor is a party to an ALJ hearing and a party requests discovery under § 405.1037 against another party to the hearing, the adjudication periods discussed in paragraphs (a) and (c) of this section are tolled.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005; 74 FR 65335, Dec. 9, 2009]

§ 405.1018 Submitting evidence before the ALJ hearing.

(a) Except as provided in this section, parties must submit all written evidence they wish to have considered at the hearing with the request for hearing (or within 10 calendar days of receiving the notice of hearing).

(b) If a party 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 § 405.1016.

(c) Any evidence submitted by a provider, supplier, or beneficiary represented by a provider or supplier that is not submitted prior to the issuance of the QIC’s reconsideration determination must be accompanied by a statement explaining why the evidence was not previously submitted to the QIC, or a prior decision-maker (see § 405.1028).

(d) The requirements of this section do not apply to oral testimony given at a hearing, or to evidence submitted by an unrepresented beneficiary.

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

§ 405.1020 Time and place for a hearing before an ALJ.

(a) General. 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. The ALJ will direct that the appearance of an individual be conducted by videoteleconferencing (VTC) if the ALJ finds that VTC technology is available to conduct the appearance. 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 one or more of the parties. The ALJ, with the concurrence of the Managing Field Office ALJ, may determine that an in-person hearing should be conducted if—

1. VTC technology is not available; or
2. Special or extraordinary circumstances exist.

(c) Notice of hearing. (1) The ALJ sends a notice of hearing to all parties that filed an appeal or participated in the reconsideration, any party who was found liable for the services at issue subsequent to the initial determination, and the QIC that issued the reconsideration, advising them of the proposed time and place of the hearing.

(2) The notice of hearing will require all parties to the ALJ hearing (and any potential participant from CMS or its contractor who wishes to attend the hearing) 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) A party’s right to waive a hearing. A party may also waive the right to a hearing and request that the ALJ issue a decision based on the written evidence in the record. As provided in § 405.1000, the ALJ may require the parties to attend a hearing if it is necessary to decide the case. If the ALJ determines that it is necessary to obtain testimony from a non-party, he or she may still hold a hearing to obtain that testimony, even if all of the parties have waived the right to appear. In those cases, the ALJ will give the parties the opportunity to appear when the testimony is given but may hold the hearing even if none of the parties decide to appear.

(e) A party’s objection to time and place of hearing. (1) If a party objects to the time and place of the hearing, the party must notify the ALJ at the earliest possible opportunity before the time set for the hearing.

(2) The party must state the reason for the objection and state the time