

(v) Transportation is not readily available for a party to travel to the hearing.

(vi) The party 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) that he or she has.

(vii) The party or representative has a prior commitment that cannot be changed without significant expense.

(viii) The party or representative asserts that he or she did not receive the notice of hearing and is unable to appear at the scheduled time and place.

(h) *Effect of rescheduling hearing.* If a hearing is postponed at the request of the appellant for any of the above reasons, the time between the originally scheduled hearing date and the new hearing date is not counted toward the adjudication period specified in § 405.1016.

(i) *A party's request for an in-person or VTC hearing.* (1) If an unrepresented beneficiary who filed the request for hearing objects to a VTC hearing or to the ALJ's offer to conduct a hearing by telephone, or if a party other than an unrepresented beneficiary who filed the request for hearing objects to a telephone or VTC hearing, the party must notify the ALJ at the earliest possible opportunity before the time set for the hearing and request a VTC or an in-person hearing.

(2) The party must state the reason for the objection and state the time and/or place he or she wants an in-person or VTC hearing to be held.

(3) The request must be in writing.

(4) When a party's request for an in-person or VTC hearing as specified under paragraph (i)(1) of this section is granted and an adjudication time frame applies in accordance with § 405.1016, the ALJ issues a decision, dismissal, or remand to the QIC within the adjudication time frame specified in § 405.1016 (including any applicable extensions provided in this subpart) unless the party requesting the hearing agrees to waive such adjudication time frame in writing.

(5) The ALJ may grant the request, with the concurrence of the Chief ALJ or designee if the request was for an in-

person hearing, upon a finding of good cause and will reschedule the hearing for a time and place when the party may appear in person or by VTC before the ALJ. Good cause is not required for a request for VTC hearing made by an unrepresented beneficiary who filed the request for hearing and objects to an ALJ's offer to conduct a hearing by telephone.

(j) *Amended notice of hearing.* If the ALJ changes or will change the time and/or place of the hearing, an amended notice of hearing must be sent to all of the parties who were sent a copy of the notice of hearing and CMS or its contractors that elected to be a participant or party to the hearing in accordance with § 405.1022(a).

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37704, June 30, 2005; 74 FR 65335, Dec. 9, 2009; 82 FR 5114, Jan. 17, 2017; 84 FR 19870, May 7, 2019]

§ 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 or otherwise transmitted in accordance with OMHA procedures to the parties and other potential participants, as provided in § 405.1020(c) at their last known address, or given by personal service, except to a party or potential participant who indicates in writing that it does not wish to receive this notice. The notice is mailed, transmitted, or served at least 20 calendar days before the hearing unless the recipient agrees in writing to the notice being mailed, transmitted, or served fewer than 20 calendar days before the hearing.

(b) *Notice information.* (1) The notice of hearing contains—

(i) A statement that the issues before the ALJ include all of the issues brought out in the initial determination, redetermination, or reconsideration that were not decided entirely in a party's favor, for the claims specified in the request for hearing; and

(ii) A statement of any specific new issues the ALJ will consider in accordance with § 405.1032.

(2) The notice will inform the parties that they may designate a person to represent them during the proceedings.

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(3) The notice must include an explanation of the procedures for requesting a change in the time or place of the hearing, a reminder that the ALJ may dismiss the hearing request if the appellant fails to appear at the scheduled hearing without good cause, and other information about the scheduling and conduct of the hearing.

(4) 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.

(5) 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 to whom the notice of hearing was sent, or their representative does not acknowledge receipt of the notice of hearing, OMHA attempts to contact the party for an explanation.

(2) If the party states that he or she did not receive the notice of hearing, a copy of the notice is sent to him or her by certified mail or other means requested by the party and in accordance with OMHA procedures.

(3) The party may request that the ALJ reschedule the hearing in accordance with § 405.1020(e).

[82 FR 5115, Jan. 17, 2017]

§ 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

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copy of the objections to all other parties who were sent a copy of the notice of hearing, and CMS or a contractor that elected to be a party to the hearing.

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

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65335, Dec. 9, 2009; 82 FR 5115, Jan. 17, 2017]

§ 405.1026 Disqualification of the ALJ or attorney adjudicator.

(a) An ALJ or attorney adjudicator cannot adjudicate an appeal 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 or attorney adjudicator assigned to adjudicate the appeal, the party must notify the ALJ within 10 calendar days of the date of the notice of hearing if a hearing is scheduled, or the ALJ or attorney adjudicator at any time before a decision, dismissal order, or remand order is issued if no hearing is scheduled. The ALJ or attorney adjudicator considers the party's objections and decides whether to proceed with the appeal or withdraw.

(c) If the ALJ or attorney adjudicator withdraws, another ALJ or attorney adjudicator will be assigned to adjudicate the appeal. If the ALJ or attorney adjudicator does not withdraw, the party may, after the ALJ or attorney adjudicator has issued an action in the case, present his or her objections to the Council in accordance with § 405.1100 through § 405.1130. The Council will then consider whether the decision or dismissal should be revised or if applicable, a new hearing held before another ALJ. If the case is escalated to the Council after a hearing is held but before the ALJ issues a decision, the Council considers the reasons the party objected to the ALJ during its review of the case and, if the Council deems it necessary, may remand the case to another ALJ for a hearing and decision.

(d) If the party objects to the ALJ or attorney adjudicator and the ALJ or attorney adjudicator subsequently withdraws from the appeal, any adjudication time frame that applies to the