

(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

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

appeal in accordance with § 405.1016 is extended by 14 calendar days.

[82 FR 5115, Jan. 17, 2017]

§ 405.1028 Review of evidence submitted by parties.

(a) *New evidence*—(1) *Examination of any new evidence.* After a hearing is requested but before a hearing is held by an ALJ or a decision is issued if no hearing is held, the ALJ or attorney adjudicator will examine any new evidence submitted in accordance with § 405.1018, by a provider, supplier, or beneficiary represented by a provider or supplier to determine whether the provider, supplier, or beneficiary represented by a provider or supplier had good cause for submitting the evidence for the first time at the OMHA level.

(2) *Determining if good cause exists.* An ALJ or attorney adjudicator finds good cause when—

(i) The new evidence is, in the opinion of the ALJ or attorney adjudicator, material to an issue addressed in the QIC's reconsideration and that issue was not identified as a material issue prior to the QIC's reconsideration;

(ii) The new evidence is, in the opinion of the ALJ, material to a new issue identified in accordance with § 405.1032(b)(1);

(iii) The party was unable to obtain the evidence before the QIC issued its reconsideration and submits evidence that, in the opinion of the ALJ or attorney adjudicator, demonstrates the party made reasonable attempts to obtain the evidence before the QIC issued its reconsideration;

(iv) The party asserts that the evidence was submitted to the QIC or another contractor and submits evidence that, in the opinion of the ALJ or attorney adjudicator, demonstrates the new evidence was submitted to the QIC or another contractor before the QIC issued the reconsideration; or

(v) In circumstances not addressed in paragraphs (a)(2)(i) through (iv) of this section, the ALJ or attorney adjudicator determines that the party has demonstrated that it could not have obtained the evidence before the QIC issued its reconsideration.

(3) *If good cause does not exist.* If the ALJ or attorney adjudicator determines that there was not good cause

for submitting the evidence for the first time at the OMHA level, the ALJ or attorney adjudicator must exclude the evidence from the proceeding and may not consider it in reaching a decision.

(4) *Notification to parties.* If a hearing is conducted, as soon as possible, but no later than the start of the hearing, the ALJ must notify all parties and participants who responded to the notice of hearing whether the evidence will be considered or is excluded from consideration.

(b) *Duplicative evidence.* The ALJ or attorney adjudicator may exclude from consideration any evidence submitted by a party at the OMHA level that is duplicative of evidence already in the record forwarded to OMHA.

[82 FR 5115, Jan. 17, 2017]

§ 405.1030 ALJ hearing procedures.

(a) *General rule.* A hearing is open to the parties and to other persons the ALJ considers necessary and proper.

(b) *At the hearing.* (1) At the hearing, the ALJ fully examines the issues, questions the parties and other witnesses, and may accept evidence that is material to the issues consistent with §§ 405.1018 and 405.1028.

(2) The ALJ may limit testimony and/or argument at the hearing that are not relevant to an issue before the ALJ, that are repetitive of evidence or testimony already in the record, or that relate to an issue that has been sufficiently developed or on which the ALJ has already ruled. The ALJ may, but is not required to, provide the party or representative with an opportunity to submit additional written statements and affidavits on the matter, in lieu of testimony and/or argument at the hearing. The written statements and affidavits must be submitted within the time frame designated by the ALJ.

(3) If the ALJ determines that a party or party's representative is uncooperative, disruptive to the hearing, or abusive during the course of the hearing after the ALJ has warned the party or representative to stop such behavior, the ALJ may excuse the party or representative from the hearing and continue with the hearing to provide the other parties and participants with