

attorney adjudicator uses the standards set forth in §405.942(b)(2) and (3) of this chapter.

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

(6) A determination granting a request to extend the filing deadline is not subject to further review.

[82 FR 5128, Jan. 17, 2017, as amended at 84 FR 19873, May 7, 2019; 86 FR 6121, Jan. 19, 2021]

**§ 423.2016 Timeframes for deciding an appeal of an IRE reconsideration.**

(a) *Standard appeals.* (1) When a request for an ALJ hearing is filed after an IRE has issued a written reconsideration, an ALJ or attorney adjudicator issues 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 office 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)(1) of this section begins on the date that a timely filed request for hearing is received by the office specified in the IRE's reconsideration, or, if it is not timely filed, the date that the ALJ or attorney adjudicator grants any extension to the filing deadline.

(3) If the Council remands a case and the case was subject to an adjudication time frame under paragraph (a)(1) of this section, the remanded appeal will be subject to the same adjudication time frame beginning on the date that OMHA receives the Council remand.

(b) *Expedited appeals*—(1) *Standard for expedited appeal.* An ALJ or attorney adjudicator issues an expedited 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 an ALJ or attorney adjudicator determines that applying the standard timeframe for making a decision may seriously jeopardize the enrollee's life, health or ability to re-

gain maximum function. An ALJ or attorney adjudicator may consider this standard as met if a lower level adjudicator has granted a request for an expedited decision.

(2) *Grant of a request.* If an ALJ or attorney adjudicator grants a request for expedited hearing, an ALJ or attorney adjudicator must—

(i) Make the decision to grant an expedited appeal within 5 calendar days of receipt of the request for an 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 an ALJ or attorney adjudicator denies a request for expedited hearing, an ALJ or attorney adjudicator 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 an ALJ or attorney adjudicator will process the enrollee's request using the 90 calendar day timeframe for non-expedited appeals; 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) *Decision not appealable.* A decision on a request for expedited hearing may not be appealed.

(5) *Time frame for adjudication.* (i) If an ALJ or attorney adjudicator accepts a request for expedited hearing, an ALJ or attorney adjudicator issues 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 office 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 office specified in the IRE's reconsideration, or, if it is not timely provided, the date that an ALJ or attorney adjudicator grants any extension to the filing deadline.

(6) *Time frame for Council remands.* If the Council remands a case and the case was subject to an adjudication time frame under paragraph (b)(5) of this section, the remanded appeal will be subject to the same adjudication timeframe beginning on the date that OMHA receives the Council remand, if the standards for an expedited appeal continue to be met. If the standards for an expedited appeal are no longer met, the appeal will be subject to the adjudication time frame for a standard appeal.

(c) *Waivers and extensions of adjudication period.* (1) At any time during the adjudication process, the enrollee may waive the adjudication period specified in paragraphs (a)(1) and (b)(5) of this section. The waiver may be for a specific period of time agreed upon by the ALJ or attorney adjudicator and the enrollee.

(2) The adjudication periods specified in paragraphs (a)(1) and (b)(5) of this section are extended as otherwise specified in this subpart, and for the following events—

(i) The duration of a stay of action on adjudicating the matters at issue ordered by a court or tribunal of competent jurisdiction;

(ii) The duration of a stay of proceedings granted by an ALJ or attorney adjudicator on a motion by an enrollee.

[82 FR 5129, Jan. 17, 2017, as amended at 84 FR 19873, May 7, 2019]

**§ 423.2018 Submitting evidence.**

(a) *All appeals.* An enrollee must submit any written or other evidence that he or she wishes to have considered.

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

(2) An ALJ or attorney adjudicator 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 or at-risk determination to be considered.

(b) *Non-expedited appeals.* (1) Except as provided in this paragraph, a represented enrollee must submit all written or other evidence he or she wishes to have considered with the request for hearing, by the date specified in the request for hearing in accordance with § 423.2014(a)(2), or, if a hearing is scheduled, within 10 calendar days of receiving the notice of hearing.

(2) If a represented enrollee submits written or other evidence later than 10 calendar days after receiving the notice of hearing, any applicable adjudication period specified in § 423.2016 is extended by the number of calendar days in the period between 10 calendar days after receipt of the notice of hearing and the day the evidence is received.

(3) The requirements of paragraph (b) of this section do not apply to unrepresented enrollees.

(c) *Expedited appeals.* (1) Except as provided in this section, an enrollee must submit all written or other evidence he or she wishes to have considered with the request for hearing, by the date specified in the request for hearing pursuant to § 423.2014(a)(2), or, if an expedited hearing is scheduled, within 2 calendar days of receiving the notice of the expedited hearing.

(2) If an enrollee submits written or other evidence later than 2 calendar days after receiving the notice of expedited hearing, any applicable adjudication period specified in § 423.2016 is extended by the number of calendar days in the period between 2 calendar days after receipt of the notice of expedited hearing and the day the evidence is received.

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

[82 FR 5130, Jan. 17, 2017, as amended at 83 FR 16754, Apr. 16, 2018]