

statement, and without making findings of fact, conclusions of law, or further explaining the reasons for the decision.

[82 FR 5133, Jan. 17, 2017, as amended at 83 FR 16754, Apr. 16, 2018]

§ 423.2040 Prehearing and posthearing conferences.

(a) The ALJ may decide on his or her own, or at the request of the enrollee to the hearing, to hold a prehearing or posthearing conference to facilitate the hearing or the hearing decision.

(b) For non-expedited hearings, the ALJ informs the enrollee, and CMS, the IRE, and/or the Part D plan sponsor if the ALJ has granted their request(s) to be a participant to the hearing at the time the notice of conference is sent, of the time, place, and purpose of the conference at least 7 calendar days before the conference date, unless the enrollee indicates in writing that he or she does not wish to receive a written notice of the conference.

(c) For expedited hearings, the ALJ informs the enrollee, and CMS, the IRE, and/or the Part D plan sponsor if the ALJ has granted their request(s) to be a participant to the hearing, of the time, place, and purpose of the conference at least 2 calendar days before the conference date, unless the enrollee indicates orally or in writing that he or she does not wish to receive a written notice of the conference.

(d) All oral requests not to receive written notice of the conference must be documented in writing and the documentation must be made part of the administrative record.

(e) At the conference—

(1) The ALJ or an OMHA attorney designated by the ALJ conducts the conference, but only the ALJ conducting a conference may consider matters in addition to those stated in the conference notice, if the enrollee consents to consideration of the additional matters in writing.

(2) An audio recording of the conference is made.

(f) The ALJ issues an order to the enrollee and all participants who attended the conference stating all agreements and actions resulting from the conference. If the enrollee does not object within 10 calendar days of re-

ceiving the order for non-expedited hearings or 1 calendar day for expedited hearings, or any additional time granted by the ALJ, the agreements and actions become part of the administrative record and are binding on the enrollee.

[82 FR 5133, Jan. 17, 2017]

§ 423.2042 The administrative record.

(a) *Creating the record.* (1) OMHA makes a complete record of the evidence and administrative proceedings on the appealed matter, including any prehearing and posthearing conference and hearing proceedings that were conducted.

(2) The record will include marked as exhibits, the appealed determinations and documents and other evidence used in making the appealed determinations and the ALJ's or attorney adjudicator's decision, including, but not limited to, medical records, written statements, certificates, reports, affidavits, and any other evidence the ALJ or attorney adjudicator admits. The record will also include any evidence excluded or not considered by the ALJ or attorney adjudicator, including but not limited to duplicative evidence submitted by the enrollee.

(3) An enrollee may request and receive a copy of the record prior to or at the hearing, or, if a hearing is not held, at any time before the notice of decision is issued.

(4) If a request for review is filed, the complete record, including any prehearing and posthearing conference and hearing recordings, is forwarded to the Council.

(5) A typed transcription of the hearing is prepared if an enrollee seeks judicial review of the case in a Federal district court within the stated time period and all other jurisdictional criteria are met, unless, upon the Secretary's motion prior to the filing of an answer, the court remands the case.

(b) *Requesting and receiving copies of the record.* (1) While an appeal is pending at OMHA, an enrollee may request and receive a copy of all or part of the record from OMHA, including any index of the administrative record, documentary evidence, and a copy of