

## § 423.2050

and revised by the ALJ or attorney adjudicator under the procedures explained in § 423.1980.

[82 FR 5135, Jan. 17, 2017]

### **§ 423.2050 Removal of a hearing request from OMHA to the Council.**

If a request for hearing is pending before OMHA, the Council may assume responsibility for holding a hearing by requesting that OMHA send the hearing request. If the Council holds a hearing, it conducts the hearing according to the rules for hearings before an ALJ. Notice is mailed to the enrollee at his or her last known address informing him or her that the Council has assumed responsibility for the case.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5135, Jan. 17, 2017]

### **§ 423.2052 Dismissal of a request for a hearing before an ALJ or request for review of an IRE dismissal.**

(a) *Dismissal of request for hearing.* An ALJ dismisses a request for a hearing under any of the following conditions:

(1) Neither the enrollee that requested the hearing nor the enrollee's representative appears at the time and place set for the hearing, if—

(i) The enrollee was notified before the time set for the hearing that the request for hearing might be dismissed for failure to appear, the record contains documentation that the enrollee acknowledged the notice of hearing, and the enrollee does not contact the ALJ within 10 calendar days after the hearing for non-expedited hearings and 2 calendar days after the hearing for expedited hearings, or does contact the ALJ but the ALJ determines the enrollee did not demonstrate good cause for not appearing; or

(ii) The record does not contain documentation that the enrollee acknowledged the notice of hearing, the ALJ sends a notice to the enrollee at his or her last known address asking why the enrollee did not appear, and the enrollee does not respond to the ALJ's notice within 10 calendar days for non-expedited hearings or within 2 calendar days for expedited hearings after receiving the notice, or does contact the ALJ but the ALJ determines the enrollee did not demonstrate good cause for not appearing. For expedited hear-

## 42 CFR Ch. IV (10–1–23 Edition)

ings, an enrollee may submit his or her response orally to the ALJ.

(iii) In determining whether good cause exists under paragraphs (a)(1)(i) and (ii) of this section, the ALJ considers any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the enrollee may have.

(2) The person requesting a hearing has no right to it under § 423.2002.

(3) The enrollee did not request a hearing within the stated time period and the ALJ has not found good cause for extending the deadline, as provided in § 423.2014(e).

(4) The enrollee died while the request for hearing is pending and the request for hearing was filed by the enrollee or the enrollee's representative, and the enrollee's surviving spouse or estate has no remaining financial interest in the case and the enrollee's representative, if any, does not wish to continue the appeal.

(5) The ALJ dismisses a hearing request entirely or refuses to consider any one or more of the issues because an IRE, an ALJ or attorney adjudicator, or the Council has made a previous determination or decision under this subpart about the enrollee's rights on the same facts and on the same issue(s), and this previous determination or decision has become binding by either administrative or judicial action.

(6) The enrollee abandons the request for hearing. An ALJ may conclude that an enrollee has abandoned a request for hearing when OMHA attempts to schedule a hearing and is unable to contact the enrollee after making reasonable efforts to do so.

(7) The enrollee's request is not complete in accordance with § 423.2014(a)(1), even after the enrollee is provided with an opportunity to complete the request.

(b) *Dismissal of request for review of IRE dismissal.* An ALJ or attorney adjudicator dismisses a request for review of an IRE dismissal under any of the following conditions:

(1) The enrollee has no right to a review of the IRE dismissal under § 423.2004.