

§ 405.1018

(3) *Invalid escalation request.* If an ALJ or attorney adjudicator determines the request for escalation does not meet the requirements of paragraph (f)(1) of this section, OMHA will send a notice to the appellant explaining why the request is invalid within 5 calendar days of receiving the request for escalation.

[82 FR 5113, Jan. 17, 2017]

§ 405.1018 Submitting evidence.

(a) *When evidence may be submitted.* Except as provided in this section, parties must submit all written or other evidence they wish to have considered with the request for hearing, by the date specified in the request for hearing in accordance with § 405.1014(a)(2), or if a hearing is scheduled, within 10 calendar days of receiving the notice of hearing.

(b) *Effect on adjudication period.* If a party submits written or other evidence later than 10 calendar days after receiving the notice of hearing, any applicable adjudication period specified in § 405.1016 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.

(c) *New evidence.* (1) Any evidence submitted by a provider, supplier, or beneficiary represented by a provider or supplier that is not submitted prior to the issuance of the QIC's reconsideration determination must be accompanied by a statement explaining why the evidence was not previously submitted to the QIC, or a prior decision-maker (see § 405.1028).

(2) If a statement explaining why the evidence was not previously submitted to the QIC or a prior decision-maker is not included with the evidence, the evidence will not be considered.

(d) *When this section does not apply.* (1) The requirements in paragraphs (a) and (b) of this section do not apply to oral testimony given at a hearing, or to evidence submitted by an unrepresented beneficiary.

(2) The requirements in paragraph (c) of this section do not apply to oral testimony given at a hearing, or to evidence submitted by an unrepresented beneficiary, CMS or any of its contractors, a Medicaid State agency, an ap-

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plicable plan, or a beneficiary represented by someone other than a provider or supplier.

[82 FR 5113, Jan. 17, 2017]

§ 405.1020 Time and place for a hearing before an ALJ.

(a) *General.* The ALJ sets the time and place for the hearing, and may change the time and place, if necessary.

(b) *Determining how appearances are made—*(1) *Appearances by unrepresented beneficiaries.* The ALJ will direct that the appearance of an unrepresented beneficiary who filed a request for hearing be conducted by video-teleconferencing (VTC) if the ALJ finds that VTC technology is available to conduct the appearance, unless the ALJ find good cause for an in-person appearance.

(i) The ALJ may also offer to conduct a hearing by telephone if the request for hearing or administrative record suggests that a telephone hearing may be more convenient for the unrepresented beneficiary.

(ii) The ALJ, with the concurrence of the Chief ALJ or designee, may find good cause that an in-person hearing should be conducted if—

(A) VTC or telephone technology is not available; or

(B) Special or extraordinary circumstances exist.

(2) *Appearances by individuals other than unrepresented beneficiaries.* The ALJ will direct that the appearance of an individual, other than an unrepresented beneficiary who filed a request for hearing, be conducted by telephone, unless the ALJ finds good cause for an appearance by other means.

(i) The ALJ may find good cause for an appearance by VTC if he or she determines that VTC is necessary to examine the facts or issues involved in the appeal.

(ii) The ALJ, with the concurrence of the Chief ALJ or designee, also may find good cause that an in-person hearing should be conducted if—

(A) VTC and telephone technology are not available; or

(B) Special or extraordinary circumstances exist.

(c) *Notice of hearing.* (1) A notice of hearing is sent to all parties that filed

an appeal or participated in the reconsideration; any party who was found liable for the services at issue subsequent to the initial determination or may be found liable based on a review of the record; the QIC that issued the reconsideration or from which the request for reconsideration was escalated, or another contractor designated to receive the notice of hearing by CMS; and CMS or a contractor that elected to participate in the proceedings in accordance with § 405.1010(b) or that the ALJ believes would be beneficial to the hearing, advising them of the proposed time and place of the hearing.

(2) The notice of hearing will require all parties to the ALJ hearing to reply to the notice by:

(i) Acknowledging whether they plan to attend the hearing at the time and place proposed in the notice of hearing, or whether they object to the proposed time and/or place of the hearing;

(ii) If the party or representative is an entity or organization, specifying who from the entity or organization plans to attend the hearing, if anyone, and in what capacity, in addition to the individual who filed the request for hearing; and

(iii) Listing the witnesses who will be providing testimony at the hearing.

(3) The notice of hearing will require CMS or a contractor that wishes to attend the hearing as a participant to reply to the notice by:

(i) Acknowledging whether it plans to attend the hearing at the time and place proposed in the notice of hearing; and

(ii) Specifying who from the entity plans to attend the hearing.

(d) *A party's right to waive a hearing.* A party may also waive the right to a hearing and request a decision based on the written evidence in the record in accordance with § 405.1038(b). As provided in § 405.1000, an ALJ may require the parties to attend a hearing if it is necessary to decide the case. If an ALJ determines that it is necessary to obtain testimony from a non-party, he or she may still hold a hearing to obtain that testimony, even if all of the parties have waived the right to appear. In those cases, the ALJ will give the parties the opportunity to appear when

the testimony is given but may hold the hearing even if none of the parties decide to appear.

(e) *A party's objection to time and place of hearing.* (1) If a party objects to the time and place of the hearing, the party must notify the ALJ at the earliest possible opportunity before the time set for the hearing.

(2) The party must state the reason for the objection and state the time and place he or she wants the hearing to be held.

(3) The request must be in writing, except that a party may orally request that a hearing be rescheduled in an emergency circumstance the day prior to or day of the hearing. The ALJ must document all oral requests for a rescheduled hearing in writing and maintain the documentation in the administrative record.

(4) The ALJ may change the time or place of the hearing if the party has good cause.

(5) If the party's objection to the place of the hearing includes a request for an in-person or VTC hearing, the objection and request are considered in paragraph (i) of this section.

(f) *Good cause for changing the time or place.* The ALJ can find good cause for changing the time or place of the scheduled hearing and reschedule the hearing if the information available to the ALJ supports the party's contention that—

(1) The party or his or her representative is unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing; or

(3) Good cause exists as set forth in paragraph (g) of this section.

(g) *Good cause in other circumstances.* (1) In determining whether good cause exists in circumstances other than those set forth in paragraph (f) of this section, the ALJ considers the party's reason for requesting the change, the facts supporting the request, and the impact of the proposed change on the efficient administration of the hearing process.

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(2) Factors evaluated to determine the impact of the change include, but are not limited to, the effect on processing other scheduled hearings, potential delays in rescheduling the hearing, and whether any prior changes were granted the party.

(3) Examples of other circumstances a party might give for requesting a change in the time or place of the hearing include, but are not limited to, the following:

(i) The party has attempted to obtain a representative but needs additional time.

(ii) The party's representative was appointed within 10 calendar days of the scheduled hearing and needs additional time to prepare for the hearing.

(iii) The party's representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing.

(iv) A witness who will testify to facts material to a party's case is unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained.

(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