

and other potential participants, as provided in § 405.1020(c) at their last known address, or given by personal service, except to a party or potential participant who indicates in writing that it does not wish to receive this notice. The notice is mailed, transmitted, or served at least 20 calendar days before the hearing unless the recipient agrees in writing to the notice being mailed, transmitted, or served fewer than 20 calendar days before the hearing.

(b) *Notice information.* (1) The notice of hearing contains—

(i) A statement that the issues before the ALJ include all of the issues brought out in the initial determination, redetermination, or reconsideration that were not decided entirely in a party's favor, for the claims specified in the request for hearing; and

(ii) A statement of any specific new issues the ALJ will consider in accordance with § 405.1032.

(2) The notice will inform the parties that they may designate a person to represent them during the proceedings.

(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