

considers the party's objections and decides whether to proceed with the appeal or withdraw.

(c) If the ALJ or attorney adjudicator withdraws, another ALJ or attorney adjudicator will be assigned to adjudicate the appeal. If the ALJ or attorney adjudicator does not withdraw, the party may, after the ALJ or attorney adjudicator has issued an action in the case, present his or her objections to the Council in accordance with § 405.1100 through § 405.1130. The Council will then consider whether the decision or dismissal should be revised or if applicable, a new hearing held before another ALJ. If the case is escalated to the Council after a hearing is held but before the ALJ issues a decision, the Council considers the reasons the party objected to the ALJ during its review of the case and, if the Council deems it necessary, may remand the case to another ALJ for a hearing and decision.

(d) If the party objects to the ALJ or attorney adjudicator and the ALJ or attorney adjudicator subsequently withdraws from the appeal, any adjudication time frame that applies to the appeal in accordance with § 405.1016 is extended by 14 calendar days.

[82 FR 5115, Jan. 17, 2017]

§ 405.1028 Review of evidence submitted by parties.

(a) *New evidence*—(1) *Examination of any new evidence.* After a hearing is requested but before a hearing is held by an ALJ or a decision is issued if no hearing is held, the ALJ or attorney adjudicator will examine any new evidence submitted in accordance with § 405.1018, by a provider, supplier, or beneficiary represented by a provider or supplier to determine whether the provider, supplier, or beneficiary represented by a provider or supplier had good cause for submitting the evidence for the first time at the OMHA level.

(2) *Determining if good cause exists.* An ALJ or attorney adjudicator finds good cause when—

(i) The new evidence is, in the opinion of the ALJ or attorney adjudicator, material to an issue addressed in the QIC's reconsideration and that issue was not identified as a material issue prior to the QIC's reconsideration;

(ii) The new evidence is, in the opinion of the ALJ, material to a new issue identified in accordance with § 405.1032(b)(1);

(iii) The party was unable to obtain the evidence before the QIC issued its reconsideration and submits evidence that, in the opinion of the ALJ or attorney adjudicator, demonstrates the party made reasonable attempts to obtain the evidence before the QIC issued its reconsideration;

(iv) The party asserts that the evidence was submitted to the QIC or another contractor and submits evidence that, in the opinion of the ALJ or attorney adjudicator, demonstrates the new evidence was submitted to the QIC or another contractor before the QIC issued the reconsideration; or

(v) In circumstances not addressed in paragraphs (a)(2)(i) through (iv) of this section, the ALJ or attorney adjudicator determines that the party has demonstrated that it could not have obtained the evidence before the QIC issued its reconsideration.

(3) *If good cause does not exist.* If the ALJ or attorney adjudicator determines that there was not good cause for submitting the evidence for the first time at the OMHA level, the ALJ or attorney adjudicator must exclude the evidence from the proceeding and may not consider it in reaching a decision.

(4) *Notification to parties.* If a hearing is conducted, as soon as possible, but no later than the start of the hearing, the ALJ must notify all parties and participants who responded to the notice of hearing whether the evidence will be considered or is excluded from consideration.

(b) *Duplicative evidence.* The ALJ or attorney adjudicator may exclude from consideration any evidence submitted by a party at the OMHA level that is duplicative of evidence already in the record forwarded to OMHA.

[82 FR 5115, Jan. 17, 2017]

§ 405.1030 ALJ hearing procedures.

(a) *General rule.* A hearing is open to the parties and to other persons the ALJ considers necessary and proper.

(b) *At the hearing.* (1) At the hearing, the ALJ fully examines the issues,

questions the parties and other witnesses, and may accept evidence that is material to the issues consistent with §§ 405.1018 and 405.1028.

(2) The ALJ may limit testimony and/or argument at the hearing that are not relevant to an issue before the ALJ, that are repetitive of evidence or testimony already in the record, or that relate to an issue that has been sufficiently developed or on which the ALJ has already ruled. The ALJ may, but is not required to, provide the party or representative with an opportunity to submit additional written statements and affidavits on the matter, in lieu of testimony and/or argument at the hearing. The written statements and affidavits must be submitted within the time frame designated by the ALJ.

(3) If the ALJ determines that a party or party's representative is uncooperative, disruptive to the hearing, or abusive during the course of the hearing after the ALJ has warned the party or representative to stop such behavior, the ALJ may excuse the party or representative from the hearing and continue with the hearing to provide the other parties and participants with an opportunity to offer testimony and/or argument. If a party or representative was excused from the hearing, the ALJ will provide the party or representative with an opportunity to submit written statements and affidavits in lieu of testimony and/or argument at the hearing, and the party or representative may request a recording of the hearing in accordance with § 405.1042 and respond in writing to any statements made by other parties or participants and/or testimony of the witnesses at the hearing. The written statements and affidavits must be submitted within the time frame designated by the ALJ.

(c) *Missing evidence.* The ALJ may also stop the hearing temporarily and continue it at a later date if he or she believes that there is material evidence missing at the hearing. If the missing evidence is in the possession of the appellant, and the appellant is a provider, supplier, or a beneficiary represented by a provider or supplier, the ALJ must determine if the appellant had

good cause in accordance with § 405.1028 for not producing the evidence earlier.

(d) *Effect of new evidence on adjudication period.* If an appellant, other than an unrepresented beneficiary, submits evidence pursuant to paragraph (b) or (c) of this section, and an adjudication period applies to the appeal, the adjudication period specified in § 405.1016 is extended in accordance with § 405.1018(b).

(e) *Continued hearing.* (1) A hearing may be continued to a later date. Notice of the continued hearing must be sent in accordance with § 405.1022, except that a waiver of notice of the hearing may be made in writing or on the record, and the notice is sent to the parties and participants who attended the hearing, and any additional parties or potential parties or participants the ALJ determines are appropriate.

(2) If the appellant requests the continuance and an adjudication period applies to the appeal in accordance with § 405.1016, the adjudication period is extended by the period between the initial hearing date and the continued hearing date.

(f) *Supplemental hearing.* (1) The ALJ may conduct a supplemental hearing at any time before he or she mails a notice of the decision in order to receive new and material evidence, obtain additional testimony, or address a procedural matter. The ALJ determines whether a supplemental hearing is necessary and if one is held, the scope of the hearing, including when evidence is presented and what issues are discussed. Notice of the supplemental hearing must be sent in accordance with § 405.1022, except that the notice is sent to the parties and participants who attended the hearing, and any additional parties or potential parties or participants the ALJ determines are appropriate.

(2) If the appellant requests the supplemental hearing and an adjudication period applies to the appeal in accordance with § 405.1016, the adjudication period is extended by the period between the initial hearing date and the supplemental hearing date.

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