

§ 422.1022

request a hearing before an ALJ to appeal any determination by CMS to impose a civil money penalty.

(b) *Content of request for hearing.* The request for hearing must—

(1) Identify the specific issues, and the findings of fact and conclusions of law with which the affected party disagrees; and

(2) Specify the basis for each contention that the finding or conclusion of law is incorrect.

[72 FR 68726, Dec. 5, 2007, as amended at 79 FR 29960, May 23, 2014]

§ 422.1022 Parties to the hearing.

The parties to the hearing are the affected party and CMS, as appropriate.

§ 422.1024 Designation of hearing official.

(a) The Chair of the Departmental Appeals Board, or his or her delegate designates an ALJ or a member or members of the Departmental Appeals Board to conduct the hearing.

(b) If appropriate, the Chair or the delegate may substitute another ALJ or another member or other members of the Departmental Appeals Board to conduct the hearing.

(c) As used in this part, “ALJ” includes a member or members of the Departmental Appeals Board who are designated to conduct a hearing.

§ 422.1026 Disqualification of Administrative Law Judge.

(a) An ALJ may not conduct a hearing in a case in which he or she is prejudiced or partial to the affected party or has any interest in the matter pending for decision.

(b) A party that objects to the ALJ designated to conduct the hearing must give notice of its objections at the earliest opportunity.

(c) The ALJ will consider the objections and decide whether to withdraw or proceed with the hearing.

(1) If the ALJ withdraws, another ALJ will be designated to conduct the hearing.

(2) If the ALJ does not withdraw, the objecting party may, after the hearing, present its objections to the Departmental Appeals Board as reasons for changing, modifying, or reversing the

42 CFR Ch. IV (10–1–24 Edition)

ALJ’s decision or providing a new hearing before another ALJ.

§ 422.1028 Prehearing conference.

(a) At any time before the hearing, the ALJ may call a prehearing conference for the purpose of delineating the issues in controversy, identifying the evidence and witnesses to be presented at the hearing, and obtaining stipulations accordingly.

(b) On the request of either party or on his or her own motion, the ALJ may adjourn the prehearing conference and reconvene at a later date.

§ 422.1030 Notice of prehearing conference.

(a) *Timing of notice.* The ALJ will fix a time and place for the prehearing conference and mail written notice to the parties at least 10 calendar days before the scheduled date.

(b) *Content of notice.* The notice will inform the parties of the purpose of the conference and specify what issues are sought to be resolved, agreed to, or excluded.

(c) *Additional issues.* Issues other than those set forth in the notice of determination or the request for hearing may be considered at the prehearing conference if—

(1) Either party gives timely notice to that effect to the ALJ and the other party; or

(2) The ALJ raises the issues in the notice of prehearing conference or at the conference.

§ 422.1032 Conduct of prehearing conference.

(a) The prehearing conference is open to the affected party or its representative, to the CMS representatives and their technical advisors, and to any other persons whose presence the ALJ considers necessary or proper.

(b) The ALJ may accept the agreement of the parties as to the following:

(1) Facts that are not in controversy.

(2) Questions that have been resolved favorably to the affected party after the determination in dispute.

(3) Remaining issues to be resolved.

(c) The ALJ may request the parties to indicate the following:

(1) The witnesses that will be present to testify at the hearing.