

any new evidence that is submitted for consideration.

(f) The ALJ may require the enrollee to participate in a hearing if it is necessary to decide the case. If the ALJ determines that it is necessary to obtain testimony from a person other than the enrollee, he or she may hold a hearing to obtain that testimony, even if the enrollee has waived the right to appear. In that event, however, the ALJ will give the enrollee the opportunity to appear when the testimony is given, but may hold the hearing even if the enrollee decides not to appear.

(g) An ALJ or attorney adjudicator may also issue a decision on the record on his or her own initiative if the evidence in the administrative record supports a fully favorable finding.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5127, Jan. 17, 2017]

#### § 423.2002 Right to an ALJ hearing.

(a) An enrollee who is dissatisfied with the IRE reconsideration determination has a right to a hearing before an ALJ if—

(1) The enrollee files a written request for an ALJ hearing within 60 calendar days after receipt of the written notice of the IRE's reconsideration; and

(2) The enrollee meets the amount in controversy requirements of § 423.2006.

(b) An enrollee may request that the hearing before an ALJ be expedited if:

(1) The appeal involves an issue specified in § 423.566(b) but does not include solely a request for payment of Part D drugs already furnished;

(2) The enrollee submits a written or oral request for an expedited ALJ hearing within 60 calendar days of the date of the written notice of an IRE reconsideration determination. The request can only be submitted after the enrollee receives the written IRE reconsideration notice. The request should also explain why applying the standard timeframe may seriously jeopardize the life or health of the enrollee; and

(3) The enrollee meets the amount in controversy requirements of § 423.2006.

(c) OMHA must document all oral requests for expedited hearings in writing and maintain the documentation in the case files.

(d) For purposes of this section, the date of receipt of the reconsideration is presumed to be 5 calendar days after the date of the written reconsideration, unless there is evidence to the contrary.

(e) For purposes of meeting the 60 calendar day filing deadline, the request is considered as filed on the date it is received by the office specified in the IRE's reconsideration.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5127, Jan. 17, 2017; 84 FR 19872, May 7, 2019]

#### § 423.2004 Right to a review of IRE notice of dismissal.

(a) An enrollee has a right to have an IRE's dismissal of a request for reconsideration reviewed by an ALJ or attorney adjudicator if—

(1) The enrollee files a written request for review within 60 calendar days after receipt of the notice of the IRE's dismissal.

(2) The enrollee meets the amount in controversy requirements of § 423.2006.

(3) For purposes of this section, the date of receipt of the IRE's dismissal is presumed to be 5 calendar days after the date of the written dismissal notice, unless there is evidence to the contrary.

(4) For purposes of meeting the 60 calendar day filing deadline, the request is considered as filed on the date it is received by the office specified in the IRE's dismissal.

(b) If the ALJ or attorney adjudicator determines that the IRE's dismissal was in error, he or she vacates the dismissal and remands the case to the IRE for a reconsideration in accordance with § 423.2056.

(c) If the ALJ or attorney adjudicator affirms the IRE's dismissal of a reconsideration request, he or she issues a notice of decision affirming the IRE's dismissal in accordance with § 423.2046(b).

(d) The ALJ or attorney adjudicator may dismiss the request for review of an IRE's dismissal in accordance with § 423.2052(b).

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5127, Jan. 17, 2017; 84 FR 19872, May 7, 2019]