

§ 423.2006 Amount in controversy required for an ALJ hearing and judicial review.

(a) *ALJ review.* To be entitled to a hearing before an ALJ, an enrollee must meet the amount in controversy requirements of this section.

(1) For ALJ hearing requests, the required amount remaining in controversy must be \$100, increased by the percentage increase in the medical care component of the Consumer Price Index for All Urban Consumers (U.S. city average) as measured from July 2003 to the July preceding the current year involved.

(2) If the figure in paragraph (a)(1) of this section is not a multiple of \$10, it is rounded to the nearest multiple of \$10. The Secretary will publish changes to the amount in controversy requirement in the FEDERAL REGISTER when necessary.

(b) *Judicial review.* To be entitled to judicial review, the enrollee must meet the amount in controversy requirements of this subpart at the time it requests judicial review. For review requests, the required amount remaining in controversy must be \$1,000 or more, adjusted as specified in paragraphs (a)(1) and (2) of this section.

(c) *Calculating the amount remaining in controversy.* (1) The amount remaining in controversy is computed as the projected value described in paragraph (c)(2) or (3) of this section, reduced by any cost sharing amounts, including deductible, coinsurance, or copayment amounts that may be collected from the enrollee for the Part D drug(s).

(2) If the basis for the appeal is the refusal by the Part D plan sponsor to provide drug benefits, the projected value of those benefits is used to compute the amount remaining in controversy. The projected value of a Part D drug or drugs must include any costs the enrollee could incur based on the number of refills prescribed for the drug(s) in dispute during the plan year.

(3) If the basis for the appeal is an at-risk determination made under a drug management program in accordance with § 423.153(f), the projected value of the drugs subject to the drug management program is used to compute the amount remaining in controversy. The projected value of the drugs subject to

the drug management program shall include the value of any refills prescribed for the drug(s) in dispute during the plan year.

(d) *Aggregating appeals to meet the amount in controversy*—(1) *Enrollee.* Two or more appeals may be aggregated by an enrollee to meet the amount in controversy for an ALJ hearing if—

(i) The appeals have previously been reconsidered by an IRE;

(ii) The enrollee requests aggregation at the same time the requests for hearing are filed, and the request for aggregation and requests for hearing are filed within 60 calendar days after receipt of the notice of reconsideration for each of the reconsiderations being appealed, unless the deadline to file one or more of the requests for hearing has been extended in accordance with § 423.2014(d); and

(iii) The appeals the enrollee seeks to aggregate involve the delivery of prescription drugs to a single enrollee, as determined by an ALJ or attorney adjudicator. Only an ALJ may determine the appeals the enrollee seeks to aggregate do not involve the delivery of prescription drugs to a single enrollee.

(2) *Multiple enrollees.* Two or more appeals may be aggregated by multiple enrollees to meet the amount in controversy for an ALJ hearing if—

(i) The appeals have previously been reconsidered by an IRE;

(ii) The enrollees request aggregation at the same time the requests for hearing are filed, and the request for aggregation and requests for hearing are filed within 60 calendar days after receipt of the notice of reconsideration for each of the reconsiderations being appealed, unless the deadline to file one or more of the requests for hearing has been extended in accordance with § 423.2014(d); and

(iii) The appeals the enrollees seek to aggregate involve the same prescription drugs, as determined by an ALJ or attorney adjudicator. Only an ALJ may determine the appeals the enrollees seek to aggregate do not involve the same prescription drugs.

[84 FR 19872, May 7, 2019, as amended at 86 FR 6121, Jan. 19, 2021]