

end of the 90 calendar day period beginning on the date the request for hearing is received by the office specified in the IRE's notice of reconsideration, unless the 90 calendar day period has been extended as provided in this subpart.

(2) The adjudication period specified in paragraph (a)(1) of this section begins on the date that a timely filed request for hearing is received by the office specified in the IRE's reconsideration, or, if it is not timely filed, the date that the ALJ or attorney adjudicator grants any extension to the filing deadline.

(3) If the Council remands a case and the case was subject to an adjudication time frame under paragraph (a)(1) of this section, the remanded appeal will be subject to the same adjudication time frame beginning on the date that OMHA receives the Council remand.

(b) *Expedited appeals*—(1) *Standard for expedited appeal*. An ALJ or attorney adjudicator issues an expedited decision if the appeal involves an issue specified in § 423.566(b), but is not solely a request for payment of Part D drugs already furnished, and the enrollee's prescribing physician or other prescriber indicates, or an ALJ or attorney adjudicator determines that applying the standard timeframe for making a decision may seriously jeopardize the enrollee's life, health or ability to regain maximum function. An ALJ or attorney adjudicator may consider this standard as met if a lower level adjudicator has granted a request for an expedited decision.

(2) *Grant of a request*. If an ALJ or attorney adjudicator grants a request for expedited hearing, an ALJ or attorney adjudicator must—

(i) Make the decision to grant an expedited appeal within 5 calendar days of receipt of the request for an expedited hearing;

(ii) Give the enrollee prompt oral notice of this decision; and

(iii) Subsequently send to the enrollee at his or her last known address and to the Part D plan sponsor written notice of the decision. This notice may be provided within the written notice of hearing.

(3) *Denial of a request*. If an ALJ or attorney adjudicator denies a request for

expedited hearing, an ALJ or attorney adjudicator must—

(i) Make this decision within 5 calendar days of receipt of the request for expedited hearing;

(ii) Give the enrollee prompt oral notice of the denial that informs the enrollee of the denial and explains that an ALJ or attorney adjudicator will process the enrollee's request using the 90 calendar day timeframe for non-expedited appeals; and

(iii) Subsequently send to the enrollee at his or her last known address and to the Part D plan sponsor an equivalent written notice of the decision within 3 calendar days after the oral notice.

(4) *Decision not appealable*. A decision on a request for expedited hearing may not be appealed.

(5) *Time frame for adjudication*. (i) If an ALJ or attorney adjudicator accepts a request for expedited hearing, an ALJ or attorney adjudicator issues a written decision, dismissal order, or remand as expeditiously as the enrollee's health condition requires, but no later than the end of the 10 calendar day period beginning on the date the request for hearing is received by the office specified in the IRE's written notice of reconsideration, unless the 10 calendar day period has been extended as provided in this subpart.

(ii) The adjudication period specified in paragraph (b)(5)(i) of this section begins on the date that a timely provided request for hearing is received by the office specified in the IRE's reconsideration, or, if it is not timely provided, the date that an ALJ or attorney adjudicator grants any extension to the filing deadline.

(6) *Time frame for Council remands*. If the Council remands a case and the case was subject to an adjudication time frame under paragraph (b)(5) of this section, the remanded appeal will be subject to the same adjudication timeframe beginning on the date that OMHA receives the Council remand, if the standards for an expedited appeal continue to be met. If the standards for an expedited appeal are no longer met, the appeal will be subject to the adjudication time frame for a standard appeal.

(c) *Waivers and extensions of adjudication period.* (1) At any time during the adjudication process, the enrollee may waive the adjudication period specified in paragraphs (a)(1) and (b)(5) of this section. The waiver may be for a specific period of time agreed upon by the ALJ or attorney adjudicator and the enrollee.

(2) The adjudication periods specified in paragraphs (a)(1) and (b)(5) of this section are extended as otherwise specified in this subpart, and for the following events—

(i) The duration of a stay of action on adjudicating the matters at issue ordered by a court or tribunal of competent jurisdiction;

(ii) The duration of a stay of proceedings granted by an ALJ or attorney adjudicator on a motion by an enrollee.

[82 FR 5129, Jan. 17, 2017, as amended at 84 FR 19873, May 7, 2019]

§ 423.2018 Submitting evidence.

(a) *All appeals.* An enrollee must submit any written or other evidence that he or she wishes to have considered.

(1) An ALJ or attorney adjudicator will not consider any evidence submitted regarding a change in condition of an enrollee after the appealed coverage determination or at-risk determination was made.

(2) An ALJ or attorney adjudicator will remand a case to the Part D IRE where an enrollee wishes evidence on his or her change in condition after the coverage determination or at-risk determination to be considered.

(b) *Non-expedited appeals.* (1) Except as provided in this paragraph, a represented enrollee must submit all written or other evidence he or she wishes to have considered with the request for hearing, by the date specified in the request for hearing in accordance with § 423.2014(a)(2), or, if a hearing is scheduled, within 10 calendar days of receiving the notice of hearing.

(2) If a represented enrollee submits written or other evidence later than 10 calendar days after receiving the notice of hearing, any applicable adjudication period specified in § 423.2016 is extended by the number of calendar days in the period between 10 calendar days after receipt of the notice of hear-

ing and the day the evidence is received.

(3) The requirements of paragraph (b) of this section do not apply to unrepresented enrollees.

(c) *Expedited appeals.* (1) Except as provided in this section, an enrollee must submit all written or other evidence he or she wishes to have considered with the request for hearing, by the date specified in the request for hearing pursuant to § 423.2014(a)(2), or, if an expedited hearing is scheduled, within 2 calendar days of receiving the notice of the expedited hearing.

(2) If an enrollee submits written or other evidence later than 2 calendar days after receiving the notice of expedited hearing, any applicable adjudication period specified in § 423.2016 is extended by the number of calendar days in the period between 2 calendar days after receipt of the notice of expedited hearing and the day the evidence is received.

(d) *When this section does not apply.* The requirements of paragraphs (b) and (c) of this section do not apply to oral testimony given at a hearing.

[82 FR 5130, Jan. 17, 2017, as amended at 83 FR 16754, Apr. 16, 2018]

§ 423.2020 Time and place for a hearing before an ALJ.

(a) *General.* The ALJ sets the time and place for the hearing, and may change the time and place, if necessary.

(b) *Determining how appearances are made.* (1) *Appearances by unrepresented enrollees.* The ALJ will direct that the appearance of an unrepresented enrollee who filed a request for hearing be conducted by video-teleconferencing if the ALJ finds that video-teleconferencing technology is available to conduct the appearance, unless the ALJ finds good cause for an in-person appearance.

(i) The ALJ may also offer to conduct a hearing by telephone if the request for hearing or administrative record suggests that a telephone hearing may be more convenient for the unrepresented enrollee.

(ii) The ALJ, with the concurrence of the Chief ALJ or designee, may find good cause that an in-person hearing should be conducted if—

(A) The video-teleconferencing or telephone technology is not available; or

(B) Special or extraordinary circumstances exist.

(2) *Appearances by represented enrollees.* The ALJ will direct that the appearance of an individual, other than an unrepresented enrollee who filed a request for hearing, be conducted by telephone, unless the ALJ finds good cause for an appearance by other means.

(i) The ALJ may find good cause for an appearance by video-teleconferencing if he or she determines that video-teleconferencing is necessary to examine the facts or issues involved in the appeal.

(ii) The ALJ, with the concurrence of the Chief ALJ or designee, may find good cause that an in-person hearing should be conducted if—

(A) The video-teleconferencing and telephone technology are not available; or

(B) Special or extraordinary circumstances exist.

(c) *Notice of hearing.* (1) A notice of hearing is sent to the enrollee, the Part D plan sponsor that issued the coverage determination or at-risk determination, and the IRE that issued the reconsideration, advising them of the proposed time and place of the hearing.

(2) The notice of hearing will require the enrollee to reply to the notice by:

(i) Acknowledging whether they plan to attend the hearing at the time and place proposed in the notice of hearing, or whether they object to the proposed time and/or place of the hearing;

(ii) If the representative is an entity or organization, specifying who from the entity or organization plans to attend the hearing, if anyone, and in what capacity, in addition to the individual who filed the request for hearing; and

(iii) Listing the witnesses who will be providing testimony at the hearing.

(3) The notice of hearing will require CMS, the IRE, or the Part D plan sponsor that requests to attend the hearing as a participant to reply to the notice by:

(i) Acknowledging whether it plans to attend the hearing at the time and

place proposed in the notice of hearing; and

(ii) Specifying who from the entity plans to attend the hearing,

(d) *An enrollee's right to waive a hearing.* An enrollee may also waive the right to a hearing and request a decision based on the written evidence in the record in accordance with § 423.2038(b).

(1) As specified in § 423.2000, an ALJ may require the enrollee to attend a hearing if it is necessary to decide the case.

(2) If an ALJ determines that it is necessary to obtain testimony from a person other than the enrollee, he or she may still hold a hearing to obtain that testimony, even if the enrollee has waived the right to appear. In those cases, the ALJ would 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.

(e) *An enrollee's objection to time and place of hearing.* (1) If an enrollee objects to the time and place of the hearing, the enrollee must notify the ALJ at the earliest possible opportunity before the time set for the hearing.

(2) The enrollee must state the reason for the objection and state the time and place he or she wants the hearing to be held.

(3) The objection must be in writing except for an expedited hearing when the objection may be provided orally, and except that the enrollee may orally request that a non-expedited hearing be rescheduled in an emergency circumstance the day prior to or day of the hearing. The ALJ must document all oral objections to the time and place of a hearing in writing and maintain the documentation in the case files.

(4) The ALJ may change the time or place of the hearing if the enrollee has good cause.

(5) If the enrollee's objection to the place of the hearing includes a request for an in-person or video-teleconferencing hearing, the objection and request are considered in paragraph (i) of this section.

(f) *Good cause for changing the time or place.* The ALJ can find good cause for changing the time or place of the

scheduled hearing and reschedule the hearing if the information available to the ALJ supports the enrollee's contention that—

(1) The enrollee or his or her representative is unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or

(2) Severe weather conditions make it impossible to travel to the hearing; or

(3) Good cause exists as set forth in paragraph (g) of this section.

(g) *Good cause in other circumstances.*

(1) In determining whether good cause exists in circumstances other than those set forth in paragraph (f) of this section, the ALJ considers the enrollee's reason for requesting the change, the facts supporting the request, and the impact of the change on the efficient administration of the hearing process.

(2) Factors evaluated to determine the impact of the change include, but are not limited to, the effect on processing other scheduled hearings, potential delays in rescheduling the hearing, and whether any prior changes were granted the enrollee.

(3) Examples of other circumstances an enrollee might give for requesting a change in the time or place of the hearing include, but are not limited to, the following:

(i) The enrollee has attempted to obtain a representative but needs additional time.

(ii) The enrollee's representative was appointed within 10 calendar days of the scheduled hearing for non-expedited hearings (or 2 calendar days for expedited hearings) and needs additional time to prepare for the hearing.

(iii) The enrollee's representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing.

(iv) A witness who will testify to facts material to an enrollee's case is unavailable to attend the scheduled hearing and the evidence cannot be otherwise obtained.

(v) Transportation is not readily available for an enrollee to travel to the hearing.

(vi) The enrollee is unrepresented, and is unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language).

(vii) The enrollee or enrollee's representative has a prior commitment that cannot be changed without significant expense.

(viii) The enrollee or enrollee's representative asserts he or she did not receive the notice of hearing and is unable to appear at the scheduled time and place.

(h) *Effect of rescheduling hearing.* If a hearing is postponed at the request of the enrollee for any of the above reasons, the time between the originally scheduled hearing date and the new hearing date is not counted toward the adjudication period specified in § 423.2016.

(i) *An enrollee's request for an in-person or video-teleconferencing hearing.* (1) If an unrepresented enrollee objects to a video-teleconferencing hearing or to the ALJ's offer to conduct a hearing by telephone, or a represented enrollee who filed the request for hearing objects to a telephone or video-teleconferencing hearing, the enrollee or the enrollee's representative must notify the ALJ at the earliest possible opportunity before the time set for the hearing and request a video-teleconferencing or an in-person hearing.

(2) The enrollee must state the reason for the objection and state the time and/or place he or she wants an in-person or video-teleconferencing hearing to be held.

(3) The request must be in writing except for an expedited hearing for which the request may be provided orally. The ALJ must document all oral objections to an expedited video-teleconferencing or telephone hearing in writing and maintain the documentation in the case files.

(4) When an enrollee's request for an in-person or video-teleconferencing hearing is granted and an adjudication time frame applies in accordance with § 423.2016, the ALJ issues a decision, dismissal, or remand to the IRE within the adjudication time frame specified in § 423.2016 (including any applicable extensions provided in this subpart),