

than the enrollee subject to a subpoena issued under this section has refused to comply with the subpoena, the ALJ may request that the Secretary seek enforcement of the subpoena in accordance with section 205(e) of the Act, 42 U.S.C. 405(e).

(ii) After submitting the enforcement request, the time period for the ALJ to issue a decision, dismissal or remand a case in response to a request for hearing is stayed for 15 calendar days or until the Secretary makes a decision with respect to the enforcement request, whichever occurs first.

(iii) Any enforcement request by an ALJ must consist of a written notice to the Secretary describing in detail the ALJ's findings of noncompliance and his or her specific request for enforcement, and providing a copy of the subpoena and evidence of its receipt by certified mail by the enrollee or person other than the enrollee subject to the subpoena.

(iv) The ALJ must promptly mail a copy of the notice and related documents to the individual or entity subject to the subpoena, to the enrollee, and to any other affected person.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5133, Jan. 17, 2017; 83 FR 16754, Apr. 16, 2018; 84 FR 19873, May 7, 2019; 86 FR 6121, Jan. 19, 2021]

§ 423.2038 Deciding a case without a hearing before an ALJ.

(a) *Decision fully favorable.* If the evidence in the administrative record supports a finding fully in favor of the enrollee(s) on every issue, the ALJ or attorney adjudicator may issue a decision without giving the enrollee(s) prior notice and without an ALJ conducting a hearing. The notice of the decision informs the enrollee(s) that he or she has the right to a hearing and a right to examine the evidence on which the decision is based.

(b) *Enrollee does not wish to appear.* (1) The ALJ or attorney adjudicator may decide a case on the record and without an ALJ conducting a hearing if—

(i) The enrollee indicates in writing or, for expedited hearings orally or in writing, that he or she does not wish to appear before an ALJ at a hearing, including a hearing conducted by telephone or video-teleconferencing, if

available. OMHA must document all oral requests not to appear at a hearing in writing and maintain the documentation in the case files; or

(ii) The enrollee lives outside the United States and does not inform OMHA that he or she wants to appear at a hearing before an ALJ.

(2) When a hearing is not held, the decision of the ALJ or attorney adjudicator must refer to the evidence in the record on which the decision was based.

(c) *Stipulated decision.* If CMS, the IRE, and/or the Part D plan sponsor submits a written statement or makes an oral statement at a hearing indicating the drug should be covered or payment may be made, or an enrollee's at-risk determination should be reversed, and the written or oral statement agrees to the amount of payment the parties believe should be made if the amount of payment is an issue before the ALJ or attorney adjudicator, an ALJ or attorney adjudicator may issue a stipulated decision finding in favor of the enrollee on the basis of the statement, and without making findings of fact, conclusions of law, or further explaining the reasons for the decision.

[82 FR 5133, Jan. 17, 2017, as amended at 83 FR 16754, Apr. 16, 2018]

§ 423.2040 Prehearing and posthearing conferences.

(a) The ALJ may decide on his or her own, or at the request of the enrollee to the hearing, to hold a prehearing or posthearing conference to facilitate the hearing or the hearing decision.

(b) For non-expedited hearings, the ALJ informs the enrollee, and CMS, the IRE, and/or the Part D plan sponsor if the ALJ has granted their request(s) to be a participant to the hearing at the time the notice of conference is sent, of the time, place, and purpose of the conference at least 7 calendar days before the conference date, unless the enrollee indicates in writing that he or she does not wish to receive a written notice of the conference.

(c) For expedited hearings, the ALJ informs the enrollee, and CMS, the IRE, and/or the Part D plan sponsor if the ALJ has granted their request(s) to be a participant to the hearing, of the