

## § 150.419

(1) Applies the factors that are identified in § 150.317.

(2) May consider evidence of record relating to any factor that CMS did not apply in making its initial determination, so long as that factor is identified in this subpart.

(c) If the ALJ finds that a basis exists to assess a civil money penalty, the ALJ may sustain, reduce, or increase the penalty that CMS assessed.

### § 150.419 Forms of hearing.

(a) All hearings before an ALJ are on the record. The ALJ may receive argument or testimony in writing, in person, by telephone, or by video teleconference. The ALJ may receive testimony by telephone only if the ALJ determines that doing so is in the interest of justice and economy and that no party will be unduly prejudiced. The ALJ may require submission of a witness' direct testimony in writing only if the witness is available for cross-examination.

(b) The ALJ may decide a case based solely on the written record where there is no disputed issue of material fact the resolution of which requires the receipt of oral testimony.

[64 FR 45795, Aug. 20, 1999, as amended at 86 FR 24286, May 5, 2021]

### § 150.421 Appearance of counsel.

Any attorney who is to appear on behalf of a party must promptly file, with the ALJ, a notice of appearance.

### § 150.423 Communications with the ALJ.

No party or person (except employees of the ALJ's office) may communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for both parties to participate. This provision does not prohibit a party or person from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

### § 150.425 Motions.

(a) Any request to the ALJ for an order or ruling must be by motion, stating the relief sought, the authority relied upon, and the facts alleged. All motions must be in writing, with a copy served on the opposing party, ex-

## 45 CFR Subtitle A (10–1–24 Edition)

cept in either of the following situations:

(1) The motion is presented during an oral proceeding before an ALJ at which both parties have the opportunity to be present.

(2) An extension of time is being requested by agreement of the parties or with waiver of objections by the opposing party.

(b) Unless otherwise specified in this subpart, any response or opposition to a motion must be filed within 20 days of the party's receipt of the motion. The ALJ does not rule on a motion before the time for filing a response to the motion has expired except where the response is filed at an earlier date, where the opposing party consents to the motion being granted, or where the ALJ determines that the motion should be denied.

### § 150.427 Form and service of submissions.

(a) Every submission filed with the ALJ must be filed electronically and include:

(1) A caption on the first page, setting forth the title of the case, the docket number (if known), and a description of the submission (such as "Motion for Discovery").

(2) The signatory's name, address, and telephone number.

(3) A signed certificate of service, specifying each address to which a copy of the submission is sent, the date on which it is sent, and the method of service.

(b) A party filing a submission with the ALJ must, at the time of filing, serve a copy of such submission on the opposing party. An intervenor filing a submission with the ALJ must, at the time of filing, serve a copy of the submission on all parties. If a party is represented by an attorney, service must be made on the attorney. An electronically filed submission is considered served on all parties using the electronic filing system.

[64 FR 45795, Aug. 20, 1999, as amended at 86 FR 24286, May 5, 2021]

### § 150.429 Computation of time and extensions of time.

(a) For purposes of this subpart, in computing any period of time, the time