

§ 405.1010

request a hearing before an ALJ. However, only the appellant (that is, the party that filed and maintained the request for reconsideration by a QIC) may request that the appeal be escalated to the ALJ level if the QIC does not complete its action within the time frame described in § 405.970.

(b) *Who are parties to the ALJ hearing.* The party who filed the request for hearing and all other parties to the reconsideration are parties to the ALJ hearing. In addition, a representative of CMS or its contractor may be a party under the circumstances described in § 405.1012.

§ 405.1010 When CMS or its contractors may participate in an ALJ hearing.

(a) An ALJ may request, but may not require, CMS and/or one or more of its contractors, to participate in any proceedings before the ALJ, including the oral hearing, if any. CMS and/or one or more of its contractors, including a QIC, may also elect to participate in the hearing process.

(b) If CMS or one or more of its contractors elects to participate, it advises the ALJ, the appellant, and all other parties identified in the notice of hearing of its intent to participate no later than 10 days after receiving the notice of hearing.

(c) Participation may include filing position papers or providing testimony to clarify factual or policy issues in a case, but it does not include calling witnesses or cross-examining the witnesses of a party to the hearing.

(d) When CMS or its contractor participates in an ALJ hearing, the agency or its contractor may not be called as a witness during the hearing.

(e) CMS or its contractor must submit any position papers within the time frame designated by the ALJ.

(f) The ALJ cannot draw any adverse inferences if CMS or a contractor decides not to participate in any proceedings before an ALJ, including the hearing.

§ 405.1012 When CMS or its contractors may be a party to a hearing.

(a) CMS and/or one or more of its contractors, including a QIC, may be a party to an ALJ hearing unless the re-

42 CFR Ch. IV (10-1-06 Edition)

quest for hearing is filed by an unrepresented beneficiary.

(b) CMS and/or the contractor(s) advises the ALJ, appellant, and all other parties identified in the notice of hearing that it intends to participate as a party no later than 10 days after receiving the notice of hearing.

(c) When CMS or one or more of its contractors participate in a hearing as a party, it may file position papers, provide testimony to clarify factual or policy issues, call witnesses or cross-examine the witnesses of other parties. CMS or its contractor(s) will submit any position papers within the time frame specified by the ALJ. CMS or its contractor(s), when acting as parties, may also submit additional evidence to the ALJ within the time frame designated by the ALJ.

(d) The ALJ may not require CMS or a contractor to enter a case as a party or draw any adverse inferences if CMS or a contractor decides not to enter as a party.

§ 405.1014 Request for an ALJ hearing.

(a) *Content of the request.* The request for an ALJ hearing must be made in writing. The request must include all of the following—

(1) The name, address, and Medicare health insurance claim number of the beneficiary whose claim is being appealed.

(2) The name and address of the appellant, when the appellant is not the beneficiary.

(3) The name and address of the designated representatives if any.

(4) The document control number assigned to the appeal by the QIC, if any.

(5) The dates of service.

(6) The reasons the appellant disagrees with the QIC's reconsideration or other determination being appealed.

(7) A statement of any additional evidence to be submitted and the date it will be submitted.

(b) *When and where to file.* The request for an ALJ hearing after a QIC reconsideration must be filed—

(1) Within 60 days from the date the party receives notice of the QIC's reconsideration;

(2) With the entity specified in the QIC's reconsideration. The appellant must also send a copy of the request

for hearing to the other parties. Failure to do so will toll the ALJ's 90-day adjudication deadline until all parties to the QIC reconsideration receive notice of the requested ALJ hearing. If the request for hearing is timely filed with an entity other than the entity specified in the QIC's reconsideration, the deadline specified in § 405.1016 for deciding the appeal begins on the date the entity specified in the QIC's reconsideration receives the request for hearing. If the request for hearing is filed with an entity, other than the entity specified in the QIC's reconsideration, the ALJ hearing office must notify the appellant of the date of receipt of the request and the commencement of the 90-day adjudication time frame.

(c) *Extension of time to request a hearing.* (1) If the request for hearing is not filed within 60 calendar days of receipt of the QIC's reconsideration, an appellant may request an extension for good cause. (See §§ 405.942(b)(2) and 405.942(b)(3)).

(2) Any request for an extension of time must be in writing, give the reasons why the request for a hearing was not filed within the stated time period, and must be filed with the entity specified in the notice of reconsideration.

(3) If the ALJ finds there is good cause for missing the deadline, the time period for filing the hearing request will be extended. To determine whether good cause for late filing exists, the ALJ uses the standards set forth in § 405.942(b)(2) and § 405.942(b)(3).

(4) If a request for hearing is not timely filed, the adjudication period in § 405.1016 begins the date the ALJ grants the request to extend the filing deadline.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005]

§ 405.1016 Time frames for deciding an appeal before an ALJ.

(a) When a request for an ALJ hearing is filed after a QIC has issued a reconsideration, the ALJ must issue a decision, dismissal order, or remand to the QIC, as appropriate, no later than the end of the 90-day period beginning on the date the request for hearing is received by the entity specified in the QIC's notice of reconsideration, unless

the 90-day period has been extended as provided in this subpart.

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

(c) When an appeal is escalated to the ALJ level because the QIC has not issued a reconsideration determination within the period specified in § 405.970, the ALJ must issue a decision, dismissal order, or remand to the QIC, as appropriate, no later than the end of the 180-day period beginning on the date that the request for escalation is received by the ALJ hearing office, unless the 180-day period is extended as provided in this subpart.

(d) When CMS or its contractor is a party to an ALJ hearing and a party requests discovery under § 405.1037 against another party to the hearing, the adjudication periods discussed in paragraphs (a) and (c) of this section are tolled.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005]

§ 405.1018 Submitting evidence before the ALJ hearing.

(a) Except as provided in this section, parties must submit all written evidence they wish to have considered at the hearing with the request for hearing (or within 10 days of receiving the notice of hearing).

(b) If a party submits written evidence later than 10 days after receiving the notice of hearing, the period between the time the evidence was required to have been submitted and the time it is received is not counted toward the adjudication deadline specified in § 405.1016.

(c) Any evidence submitted by a provider, supplier, or beneficiary represented by a provider or supplier that is not submitted prior to the issuance of the QIC's reconsideration determination must be accompanied by a statement explaining why the evidence was not previously submitted to the QIC, or a prior decision-maker (see § 405.1028).

(d) The requirements of this section do not apply to oral testimony given at