
42 C.F.R. § 405.1036

Description of an ALJ hearing process.

(a) *The right to appear and present evidence.* (1) Any party to a hearing has the right to appear before the ALJ to present evidence and to state his or her position. A party may appear by video-teleconferencing (VTC), telephone, or in person as determined under § 405.1020.

(2) A party may also make his or her appearance by means of a representative, who may make the appearance by VTC, telephone, or in person, as determined under § 405.1020.

(3) Witness testimony may be given and CMS participation may also be accomplished by VTC, telephone, or in person, as determined under § 405.1020.

(b) *Waiver of the right to appear.* (1) A party may submit to OMHA a written statement indicating that he or she does not wish to appear at the hearing.

(2) The appellant may subsequently withdraw his or her waiver at any time before the notice of the hearing decision is issued; however, by withdrawing the waiver the appellant agrees to an extension of the adjudication period as specified in § 405.1016 that may be necessary to schedule and hold the hearing.

(3) Other parties may withdraw their waiver up to the date of the scheduled hearing, if any. Even if all of the parties waive their right to appear at a hearing, the ALJ may require them to attend an oral hearing if he or she believes that a personal appearance and testimony by the appellant or any other party is necessary to decide the case.

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