
42 C.F.R. § 423.2036

Description of an ALJ hearing process.

(a) *The right to appear and present evidence.* (1) An enrollee has the right to appear at the hearing before the ALJ to present evidence and to state his or her position. An enrollee may appear by video–teleconferencing, telephone, or in person as determined under § 423.2020.

(2) An enrollee may also make his or her appearance by means of a representative, who may make his or her appearance by video–teleconferencing, telephone, or in person, as determined under § 423.2020.

(3) Witness testimony may be given and CMS, IRE, and Part D plan sponsor participation may also be accomplished by video–teleconferencing, telephone, or in person, as determined under § 423.2020.

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

(i) For expedited hearings, an enrollee may indicate in writing or orally that he or she does not wish to appear at the hearing.

(ii) The OMHA hearing office must document all oral waivers in writing and maintain the documentation in the case files.

(2) The enrollee may subsequently withdraw his or her waiver in writing at any time before the notice of the hearing decision is issued; however, by withdrawing the waiver the enrollee agrees to an extension of the adjudication period as specified in § 423.2016, that may be necessary to schedule and hold the hearing.

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