

Chapter 3 PROCEDURAL SCREENING

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Last update: November 1, 2016

V-3-1 Procedural Screening, Generally

Last Update:

An initial screening of the case file and request for hearing must be conducted to determine whether:

- The request for hearing involves an appealable decision (see V-3-2, Appealable Decision).
- The individual filing the request for hearing has standing to appeal (see V-3-3, Standing).
- The amount in controversy threshold is met (see V-3-4, Amount in Controversy).
- The request for hearing is timely filed (see V-3-5, Timely Request for Hearing).
- The request for hearing is complete (see V-3-6, Complete Request for Hearing).

NOTE: There are no specific content or copy requirements for requests for hearing after SSA reconsiderations.

V-3-2 Appealable Decision

A. Jurisdiction

When reviewing a request for hearing, there must be an appealable action.

An ALJ has jurisdiction over certain actions, including:

- SSA reconsiderations involving:
 - Application for or entitlement to receive Medicare benefits. [20 C.F.R. Part 404, Subpart J](#).
 - Part B late enrollment penalty. [20 C.F.R. Part 408, Subpart B](#).
 - Part B (and Part D, if applicable) Income Related Monthly Adjustment Amount (IRMAA). [20 C.F.R. Part 418, Subparts B and C](#).

An ALJ does not have jurisdiction over certain actions, including:

- Part D late enrollment penalty. [§ 423.46\(c\)](#).
NOTE: CMS or a CMS contractor conducts the reconsideration for a Part D late enrollment penalty, rather than SSA, and the review is not subject to appeal. See also, [74 Fed. Reg. 1494, 1502–03 \(Jan. 12, 2009\)](#).
- Part D subsidy appeals. [§ 423.774\(c\)](#).
- SSA dismissal of a request for reconsideration for IRMAA that was submitted solely because the appellant believed the information provided by the IRS was incorrect. [20 C.F.R. §§ 418.1330, 418.2330](#).
- SSA dismissal of a request for a new initial determination for IRMAA. [20 C.F.R. §§ 418.1310\(d\), 418.2310](#).

See also [20 C.F.R. §§ 418.1305, 418.2305](#).

B. If No Appealable Action

If there is no appealable action, the request for hearing is dismissed for no right to hearing.

V-3-3 Standing

Citations: § 405.904(a); 20 C.F.R. §§ 404.908(b), 404.921(a), 418.1350, 418.2350.

A. SSA Reconsideration

1. Entitlement/Eligibility/Late Enrollment Penalty.

The beneficiary and any person whose rights are adversely affected may request a hearing. § 405.904(a); 20 C.F.R. §§ 404.908(b), 404.921(a).

2. Part B and D Income Related Monthly Adjustment Amount.

Only the beneficiary may request a hearing. 20 C.F.R. §§ 418.1350, 418.2350.

B. If No Party with Standing

If there is no party with standing, the request for hearing is dismissed for no right to a hearing.

V-3-4 Amount in Controversy

Citations: § 1869(b)(1)(E) of the Act; §§ 405.904(a), 405.1002(b)(3), 405.1006, 423.1970.

A. Generally

A party is entitled to a hearing only if the amount in controversy (AIC) threshold is met.

The minimum AIC is revised annually based on a formula prescribed by Congress:

Calendar Year	Minimum AIC	Federal Register Publication
2017	\$160	81 Fed. Reg. 65651 (Sep. 23, 2016)
2016	\$150	80 Fed. Reg. 57827 (Sep. 25, 2015)
2015	\$150	79 Fed. Reg. 57933 (Sep. 26, 2014)
2014	\$140	78 Fed. Reg. 59702 (Sep. 27, 2013)
2013	\$140	77 Fed. Reg. 59618 (Sep. 28, 2012)
2012	\$130	76 Fed. Reg. 59138 (Sep. 23, 2011)
2011	\$130	75 Fed. Reg. 58407 (Sep. 24, 2010)
2010	\$130	74 Fed. Reg. 48976 (Sep. 25, 2009)
2009	\$120	73 Fed. Reg. 55847 (Sep. 26, 2008)
2008	\$120	72 Fed. Reg. 73348 (Dec. 27, 2007)
2007	\$110	71 Fed. Reg. 75250 (Dec. 14, 2006)
2006	\$110	71 Fed. Reg. 2247 (Jan. 13, 2006)
2005	\$100	70 Fed. Reg. 11420, 11423 (Mar. 8, 2005)
2004	\$100	67 Fed. Reg. 62478, 62480 (Oct. 7, 2002)

B. Determination of Appropriate Calendar Year for Minimum AIC

The date SSA receives a request for hearing determines the minimum AIC to be used.

Example: If a request for hearing is sent on December 30, 2012, and received by SSA on January 2, 2013, the AIC for calendar year 2013 applies to the request.

C. When to Calculate AIC

The exact AIC must be calculated if the record does not clearly establish whether the minimum AIC is met for the benefit at issue.

D. How to Calculate AIC

Applying § 405.1006(d) by analogy for SSA determinations, AIC is calculated as follows:

- 1. Entitlement/Eligibility.** Unless otherwise indicated in the record, AIC is presumed to be met. The AIC is the cost of self-insurance or accrued medical bills during the period of

the disputed benefit, subtracting the premiums and co-pays the beneficiary would have paid.

- 2. Part B Late Enrollment Penalty.** The AIC is the monthly increase in the Part B premium due to the penalty, which is ongoing from the date of assessment, assuming the penalty is not overturned.

Example. A beneficiary disputes SSA's assessment of a 10% Part B late enrollment penalty beginning in September 2012. AIC is calculated by accruing the increase in the monthly Part B premium due to the 10% penalty, beginning in September 2012.

- 3. IRMAA.** The AIC is the disputed increase in the premium for the year the IRMAA assessment covers for Medicare Part B and, if applicable, Medicare Part D.

Example. Based on the beneficiary's tax return for the 2012 tax year with a "single" filing status, the IRS determines the beneficiary has a modified adjusted gross income (MAGI) of \$100,000, which results in an IRMAA for 2014. The beneficiary disputes SSA's assessment of a \$42.00 increase in the monthly Medicare Part B premium for 2014, as well as the \$12.10 increase in the monthly plan premium amount for Medicare Part D. Since all 12 months of 2014 would be affected by the premium increase, the AIC is 12 x \$54.10 (the monthly premium amount for both Medicare Part B and Medicare Part D).

E. Aggregation to Meet the Minimum AIC

Aggregation is not applicable to entitlement/eligibility, late enrollment penalty, and IRMAA appeals.

F. Addressing Insufficient AIC

If the minimum AIC is not met, the request for hearing is dismissed for no right to a hearing.

NOTE: Unless otherwise indicated, the Part 405 and Part 423 citations above are made applicable to SSA reconsiderations pursuant to [§ 405.904\(a\)](#) and [20 C.F.R. §§ 418.1350, 418.2350](#).

V-3-5 Timely Request for Hearing

Citations: §§ 405.942, 405.1002, 405.1014, 423.2002, 423.2014.

A. When the Request for Hearing Must be Filed

1. An appellant (beneficiary) must file a request for hearing within 60 calendar days after receiving the notice of reconsideration. §§ 405.1014(b), 423.2014(c).
2. The request for hearing is considered filed on the date when it is received by the entity specified in the reconsideration (but see subsection B, below). §§ 405.1014(b), 423.2014(c).
3. When the last day for filing a request for hearing falls on a weekend, Federal holiday, or any other day that the receiving SSA office is closed for business (for example, due to weather), the time frame for filing is automatically extended to the next business day that the SSA office is open for business.
4. An appellant is presumed to have received the reconsideration notice 5 calendar days after the date of the notice, unless the record contains evidence to the contrary. §§ 405.1002(a)(3), 423.2002(d).

NOTE: If the appellant introduces evidence that the reconsideration was not received within the 5-day mailing presumption, thereby making the request for hearing timely filed, this is not a good cause determination. Rather, it is an issue that affects when the time period to request a hearing began.

Example. SSA issues a reconsideration notice on Tuesday, September 23, 2014. The record does not show the date the appellant actually received it, so the 5-calendar day regulatory presumption applies and the 60-calendar day time period for filing the request for hearing begins on Sunday, September 28, 2014. Applying the 60-calendar day period for timely filing, the request for hearing should be filed no later than November 27, 2014. However, November 27, 2014, is a Federal holiday, so the time frame is automatically extended to the next business day that the SSA office is open for business, on Friday, November 28, 2014.

B. Where the Request for Hearing Must be Filed

An appellant must file a request for hearing with the entity specified in SSA's notice of reconsideration. However, if a request for hearing is received by an entity other than the entity specified in the notice of reconsideration (for example, an OMHA entity), the date that the incorrect entity received the request must be used to determine timeliness. §§ 405.1014(b), 423.2014(c).

NOTE: Requests for hearing after SSA reconsiderations are filed with SSA.

Example. Using the example in paragraph A, the SSA reconsideration notice identified the SSA office as the entity where appeals should be filed. If the OMHA Miami Field Office received the request on Friday, November 28, 2014, the Miami Field Office date stamps the request for hearing as received on that date and forwards it to SSA for further processing. That office would in turn forward the request to OMHA Central Operations. However, the November 28, 2014, received date will be used to assess the timeliness of the request, regardless of when OMHA Central Operations receives the request.

C. Requesting an Extension of Time

Any appellant who has a right to a hearing but does not file a timely request, may ask for an extension of time to make the request. The request for an extension must be in writing ([form HHS-727](#) may be used, but is not required), must give the reasons why the request was not filed within the required time period, and be filed with the entity specified in the notice of reconsideration. [§§ 405.1014\(c\), 423.2014\(d\)](#).

NOTE: Any explanation for a late filing is deemed a request for an extension of time to request a hearing.

D. Addressing Untimely Requests

1. Considerations when evaluating good cause. [§ 405.942\(b\)\(2\)–\(3\)](#).

When evaluating whether an appellant has shown good cause for missing a deadline to request a hearing, an ALJ considers:

- The circumstances that kept the party from making the request on time;
- If SSA’s or OMHA’s action(s) misled the party; and
- If the party had or has any physical, mental, educational, or linguistic limitations, including any lack of facility with the English language, that prevented the party from filing a timely request or from understanding or knowing about the need to file a timely request.

An ALJ must evaluate whether an appellant has shown good cause based on the circumstances of the case. Examples of when good cause for late filing may be found to exist include, but are not limited to, the following circumstances:

- The party was prevented by serious illness from contacting OMHA in person, in writing, or through a friend, relative, or other person;
- The party had a death or serious illness in his or her immediate family;
- Important records of the party were destroyed or damaged by fire or other accidental cause;

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- SSA gave the party incorrect or incomplete information about when and how to request a hearing;
- The party did not receive notice of the reconsideration; or
- The party sent the request to a Government agency in good faith within the time limit, and the request did not reach the appropriate entity until after the time period to file a request expired.

2. Developing good cause.

If there is no evidence in the file indicating that the appellant has provided a reason for the late filing, an interim letter requesting the appellant show cause (OMHA-110 Interim Letter, available in MATS) must be sent to the appellant.

The notice provides 60 calendar days from the date of the letter for an appellant to provide a reason for the late filing. The original interim letter must be placed in the file, and a copy sent to the appellant.

3. Good cause is found.

If a request for hearing is untimely, but the ALJ determines that the appellant established good cause for missing the filing deadline, the ALJ grants an extension for filing the request for hearing.

4. Good cause is not found.

If a request for hearing is untimely and there is no good cause for extending the filing deadline, the request is dismissed.

- a. If the appellant did not respond to the interim letter requesting the appellant to show cause for untimely filing, the dismissal will include a summary statement relating this fact (for example, "The appellant has not provided any explanation for its late filing; thus, I find that there is no good cause to extend the period for timely filing in this case.")
- b. If the appellant provided a reason for the untimely filing, the dismissal must explain why the reason does not constitute good cause.

NOTE: Unless otherwise indicated, the Part 405 and Part 423 citations above are made applicable to SSA reconsiderations pursuant to [§ 405.904\(a\)](#) and [20 C.F.R. §§ 418.1350, 418.2350](#).

V-3-6 Complete Request for Hearing

A. Generally

The request for hearing must be in writing. Although not mandatory, use of form [SSA-HA-501](#) is recommended. Requests for hearing after SSA reconsiderations are submitted to SSA, which forwards the requests and corresponding records to OMHA. The provisions in [§§ 405.1014](#) and [423.2014](#) (Request for an ALJ Hearing) regarding content and copy requirements do not apply to requests for hearing after SSA reconsiderations.

B. Required Elements for a Complete Requests for Hearing

There are no specific content or copy requirements for a request for hearing after an SSA reconsideration. If a request for hearing on an SSA reconsideration is filed with OMHA, the request is misdirected, and should be redirected to SSA.