

(3) NCDs are made under section 1862(a)(1) of the Act as well as under other applicable provisions of the Act.

(4) An NCD is binding on fiscal intermediaries, carriers, QIOs, QICs, ALJs, and the MAC.

(b) *Review by an ALJ.* (1) An ALJ may not disregard, set aside, or otherwise review an NCD.

(2) An ALJ may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD was applied correctly to the claim.

(c) *Review by the MAC.* (1) The MAC may not disregard, set aside, or otherwise review an NCD for purposes of a section 1869 claim appeal, except that the DAB may review NCDs as provided under part 426 of this title.

(2) The MAC may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD was applied correctly to the claim.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37704, June 30, 2005]

§ 405.1062 Applicability of local coverage determinations and other policies not binding on the ALJ and MAC.

(a) ALJs and the MAC are not bound by LCDs, LMRPs, or CMS program guidance, such as program memoranda and manual instructions, but will give substantial deference to these policies if they are applicable to a particular case.

(b) If an ALJ or MAC declines to follow a policy in a particular case, the ALJ or MAC decision must explain the reasons why the policy was not followed. An ALJ or MAC decision to disregard such policy applies only to the specific claim being considered and does not have precedential effect.

(c) An ALJ or MAC may not set aside or review the validity of an LMRP or LCD for purposes of a claim appeal. An ALJ or the DAB may review or set aside an LCD (or any part of an LMRP that constitutes an LCD) in accordance with part 426 of this title.

§ 405.1063 Applicability of laws, regulations and CMS Rulings.

(a) All laws and regulations pertaining to the Medicare and Medicaid

programs, including, but not limited to Titles XI, XVIII, and XIX of the Social Security Act and applicable implementing regulations, are binding on ALJs and the MAC.

(b) CMS Rulings are published under the authority of the Administrator, CMS. Consistent with § 401.108 of this chapter, rulings are binding on all CMS components, on all HHS components that adjudicate matters under the jurisdiction of CMS, and on the Social Security Administration to the extent that components of the Social Security Administration adjudicate matters under the jurisdiction of CMS.

[74 FR 65336, Dec. 9, 2009]

§ 405.1064 ALJ decisions involving statistical samples.

When an appeal from the QIC involves an overpayment issue and the QIC used a statistical sample in reaching its reconsideration, the ALJ must base his or her decision on a review of the entire statistical sample used by the QIC.

MEDICARE APPEALS COUNCIL REVIEW

§ 405.1100 Medicare Appeals Council review: General.

(a) The appellant or any other party to the hearing may request that the MAC review an ALJ's decision or dismissal.

(b) Under circumstances set forth in §§ 405.1104 and 405.1108, the appellant may request that a case be escalated to the MAC for a decision even if the ALJ has not issued a decision or dismissal in his or her case.

(c) When the MAC reviews an ALJ's decision, it undertakes a *de novo* review. The MAC issues a final decision or dismissal order or remands a case to the ALJ within 90 calendar days of receipt of the appellant's request for review, unless the 90 calendar day period is extended as provided in this subpart.

(d) When deciding an appeal that was escalated from the ALJ level to the MAC, the MAC will issue a final decision or dismissal order or remand the case to the ALJ within 180 calendar