

§ 405.978

42 CFR Ch. IV (10–1–11 Edition)

ALJ hearing is met when the reconsideration is partially or fully unfavorable;

(8) A description of the procedures that a party must follow in order to obtain an ALJ hearing of an expedited reconsideration, including the time frame under which a request for an ALJ hearing must be filed;

(9) If appropriate, advice as to the requirements for use of the expedited access to judicial review process set forth in § 405.990;

(10) The procedures for obtaining additional information concerning the reconsideration, such as specific provisions of the policy, manual, or regulation used in making the reconsideration; and

(11) Any other requirements specified by CMS.

§ 405.978 Effect of a reconsideration.

A reconsideration is binding on all parties, unless—

(a) An ALJ decision is issued in accordance to a request for an ALJ hearing made in accordance with § 405.1014;

(b) A review entity issues a decision in accordance to a request for expedited access to judicial review under § 405.990; or

(c) The reconsideration is revised as a result of a reopening in accordance with § 405.980.

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65334, Dec. 9, 2009]

REOPENINGS

§ 405.980 Reopenings of initial determinations, redeterminations, and reconsiderations, hearings and reviews.

(a) *General rules.* (1) A reopening is a remedial action taken to change a binding determination or decision that resulted in either an overpayment or underpayment, even though the binding determination or decision may have been correct at the time it was made based on the evidence of record. That action may be taken by—

(i) A contractor to revise the initial determination or redetermination;

(ii) A QIC to revise the reconsideration;

(iii) An ALJ to revise the hearing decision; or

(iv) The MAC to revise the hearing or review decision.

(2) If a contractor issues a denial of a claim because it did not receive requested documentation during medical review and the party subsequently requests a redetermination, the contractor must process the request as a reopening.

(3) Notwithstanding paragraph (a)(4) of this section, a contractor must process clerical errors (which includes minor errors and omissions) as reopenings, instead of as redeterminations as specified in § 405.940. If the contractor receives a request for reopening and disagrees that the issue is a clerical error, the contractor must dismiss the reopening request and advise the party of any appeal rights, provided the timeframe to request an appeal on the original denial has not expired. For purposes of this section, clerical error includes human or mechanical errors on the part of the party or the contractor such as—

(i) Mathematical or computational mistakes;

(ii) Inaccurate data entry; or

(iii) Denials of claims as duplicates.

(4) When a party has filed a valid request for an appeal of an initial determination, redetermination, reconsideration, hearing, or MAC review, no adjudicator has jurisdiction to reopen an issue on a claim that is under appeal until all appeal rights for that issue are exhausted. Once the appeal rights for the issue have been exhausted, the contractor, QIC, ALJ, or MAC may reopen as set forth in this section.

(5) The contractor's, QIC's, ALJ's, or MAC's decision on whether to reopen is binding and not subject to appeal.

(6) A determination under the Medicare secondary payer provisions of section 1862(b) of the Act that Medicare has an MSP recovery claim for services or items that were already reimbursed by the Medicare program is not a reopening, except where the recovery claim is based upon a provider's or supplier's failure to demonstrate that it filed a proper claim as defined in part 411 of this chapter.

(b) *Time frames and requirements for reopening initial determinations and redeterminations initiated by a contractor.* A

contractor may reopen an initial determination or redetermination on its own motion—

(1) Within 1 year from the date of the initial determination or redetermination for any reason.

(2) Within 4 years from the date of the initial determination or redetermination for good cause as defined in § 405.986.

(3) At any time if there exists reliable evidence as defined in § 405.902 that the initial determination was procured by fraud or similar fault as defined in § 405.902.

(4) At anytime if the initial determination is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting a clerical error on which that determination was based.

(5) At any time to effectuate a decision issued under the coverage appeals process.

(c) *Time frame and requirements for reopening initial determinations and redeterminations requested by a party.* (1) A party may request that a contractor reopen its initial determination or redetermination within 1 year from the date of the initial determination or redetermination for any reason.

(2) A party may request that a contractor reopen its initial determination or redetermination within 4 years from the date of the initial determination or redetermination for good cause in accordance with § 405.986.

(3) A party may request that a contractor reopen its initial determination at any time if the initial determination is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting a clerical error on which that determination was based. Third party payer error does not constitute clerical error. See § 405.986(c).

(d) *Time frame and requirements for reopening reconsiderations, hearing decisions and reviews initiated by a QIC, ALJ, or the MAC.* (1) A QIC may reopen its reconsideration on its own motion within 180 calendar days from the date of the reconsideration for good cause in accordance with § 405.986. If the QIC's reconsideration was procured by fraud or similar fault, then the QIC may reopen at any time.

(2) An ALJ or the MAC may reopen a hearing decision on its own motion within 180 calendar days from the date of the decision for good cause in accordance with § 405.986. If the hearing decision was procured by fraud or similar fault, then the ALJ or the MAC may reopen at any time.

(3) The MAC may reopen its review decision on its own motion within 180 calendar days from the date of the review decision for good cause in accordance with § 405.986. If the MAC's decision was procured by fraud or similar fault, then the MAC may reopen at any time.

(e) *Time frames and requirements for reopening reconsiderations, hearing decisions, and reviews requested by a party.*

(1) A party to a reconsideration may request that a QIC reopen its reconsideration within 180 calendar days from the date of the reconsideration for good cause in accordance with § 405.986.

(2) A party to a hearing may request that an ALJ or the MAC reopen a hearing decision within 180 calendar days from the date of the hearing decision for good cause in accordance with § 405.986.

(3) A party to a review may request that the MAC reopen its decision within 180 calendar days from the date of the review decision for good cause in accordance with § 405.986.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005; 74 FR 65334, Dec. 9, 2009]

§ 405.982 Notice of a revised determination or decision.

(a) *When adjudicators initiate reopenings.* When any determination or decision is reopened and revised as provided in § 405.980, the contractor, QIC, ALJ, or the MAC must mail its revised determination or decision to the parties to that determination or decision at their last known address. In the case of a full or partial reversal resulting in issuance of a payment to a provider or supplier, a revised electronic or paper remittance advice notice must be issued by the Medicare contractor. An adverse revised determination or decision must state the rationale and basis for the reopening and revision and any right to appeal.