

the denial. The written notice must inform the enrollee of the denial and explain that the MAC will process the enrollee's request using the 90 calendar day timeframe for non-expedited reviews.

(4) *Decision on a request.* A decision on a request for expedited review may not be appealed.

**§ 423.2110 MAC reviews on its own motion.**

(a) *General rule.* The MAC may decide on its own motion to review a decision or dismissal issued by an ALJ. CMS or the IRE may refer a case to the MAC for it to consider reviewing under this authority any time within 60 calendar days after the ALJ's written decision or dismissal is issued.

(b) *Referral of cases.* (1) CMS or the IRE may refer a case to the MAC if, in the view of CMS or the IRE, the decision or dismissal contains an error of law material to the outcome of the claim or presents a broad policy or procedural issue that may affect the public interest. CMS or the IRE may also request that the MAC take own motion review of a case if—

(i) CMS or the IRE participated or requested to participate in the appeal at the ALJ level; and

(ii) In CMS' or the IRE's view, the ALJ's decision or dismissal is not supported by the preponderance of evidence in the record or the ALJ abused his or her discretion.

(2) CMS' or the IRE's referral to the MAC is made in writing and must be filed with the MAC no later than 60 calendar days after the ALJ's written decision or dismissal is issued.

(i) The written referral will state the reasons why CMS or the IRE believes that the MAC should review the case on its own motion.

(ii) CMS or the IRE will send a copy of its referral to the enrollee and to the ALJ.

(iii) The enrollee may file exceptions to the referral by submitting written comments to the MAC within 20 calendar days of the referral notice.

(iv) An enrollee submitting comments to the MAC must send the comments to CMS or the IRE.

(c) *Standard of review.* (1) *Referral by CMS or the IRE when CMS or the IRE*

*participated or requested to participate in the ALJ level.* If CMS or the IRE participated or requested to participate in an appeal at the ALJ level, the MAC exercises its own motion authority if there is an error of law material to the outcome of the case, an abuse of discretion by the ALJ, the decision is not consistent with the preponderance of the evidence of record, or there is a broad policy or procedural issue that may affect the general public interest. In deciding whether to accept review under this standard, the MAC will limit its consideration of the ALJ's action to those exceptions raised by CMS or the IRE.

(2) *Referral by CMS or the IRE when CMS or the IRE did not participate or request to participate in the ALJ proceedings.* The MAC will accept review if the decision or dismissal contains an error of law material to the outcome of the case or presents a broad policy or procedural issue that may affect the general public interest. In deciding whether to accept review, the MAC will limit its consideration of the ALJ's action to those exceptions raised by CMS or the IRE.

(d) *MAC's action.* (1) If the MAC decides to review a decision or dismissal on its own motion, it will mail the results of its action to the enrollee and to CMS or the IRE, as appropriate.

(2) The MAC may adopt, modify, or reverse the decision or dismissal, may remand the case to an ALJ for further proceedings or may dismiss a hearing request.

(3) The MAC must issue its action no later than 90 calendar days after receipt of the CMS or the IRE referral, unless the 90 calendar day period has been extended as provided in this subpart.

(4) The MAC may not issue its action before the 20 calendar day comment period has expired, unless it determines that the agency's referral does not provide a basis for reviewing the case.

(5) If the MAC declines to review a decision or dismissal on its own motion, the ALJ's decision or dismissal is binding.