

respect to the rights of the same affected party on the same facts and law pertinent to the same issue or issues which has become final either by judicial affirmance or, without judicial consideration, because the affected party did not timely request reconsideration, hearing, or review, or commence a civil action with respect to that determination or decision.

(b) *No right to hearing.* The party requesting a hearing is not a proper party or does not otherwise have a right to a hearing.

(c) *Hearing request not timely filed.* The affected party did not file a hearing request timely and the time for filing has not been extended.

**§ 498.71 Notice and effect of dismissal and right to request review.**

(a) Notice of the ALJ's dismissal action is mailed to the parties. The notice advises the affected party of its right to request that the dismissal be vacated as provided in § 498.72.

(b) The dismissal of a request for hearing is binding unless it is vacated by the ALJ or the Departmental Appeals Board.

**§ 498.72 Vacating a dismissal of request for hearing.**

An ALJ may vacate any dismissal of a request for hearing if a party files a request to that effect within 60 days from receipt of the notice of dismissal and shows good cause for vacating the dismissal. (Date of receipt is determined in accordance with § 498.22(b)(3).)

**§ 498.74 Administrative Law Judge's decision.**

(a) *Timing, basis and content.* As soon as practical after the close of the hearing, the ALJ issues a written decision in the case. The decision is based on the evidence of record and contains separate numbered findings of fact and conclusions of law.

(b) *Notice and effect.* A copy of the decision is mailed to the parties and is binding on them unless—

(1) A party requests review by the Departmental Appeals Board within the time period specified in § 498.82, and the Board reviews the case;

(2) The Departmental Appeals Board denies the request for review and the

party seeks judicial review by filing an action in a United States District Court or, in the case of a civil money penalty, in a United States Court of Appeals;

(3) The decision is revised by an ALJ or the Departmental Appeals Board; or

(4) The decision is a recommended decision directed to the Board.

[52 FR 22446, June 12, 1987, as amended at 61 FR 32351, June 24, 1996]

**§ 498.76 Removal of hearing to Departmental Appeals Board.**

(a) At any time before the ALJ receives oral testimony, the Board may remove to itself any pending request for a hearing.

(b) Notice of removal is mailed to each party.

(c) The Board conducts the hearing in accordance with the rules that apply to ALJ hearings under this subpart.

**§ 498.78 Remand by the Administrative Law Judge.**

(a) If CMS requests a remand, the ALJ may remand any case properly before him or her to CMS.

(b) The ALJ may remand at any time before notice of hearing decision is mailed.

[52 FR 22446, June 12, 1987, as amended at 73 FR 36463, June 27, 2008]

**§ 498.79 Timeframes for deciding an enrollment appeal before an ALJ.**

When a request for an ALJ hearing is filed after CMS or a FFS contractor has denied an enrollment application, the ALJ must issue a decision, dismissal order or remand to CMS, as appropriate, no later than the end of the 180-day period beginning from the date the appeal was filed with an ALJ.

[73 FR 36463, June 27, 2008]

**Subpart E—Departmental Appeals Board Review**

**§ 498.80 Right to request Departmental Appeals Board review of Administrative Law Judge's decision or dismissal.**

Either of the parties has a right to request Departmental Appeals Board