

## § 405.1048

adjudicator's decision is a new initial determination under § 405.924.

(b) *Decisions on requests for review of a QIC dismissal*—(1) *General rule.* Unless the ALJ or attorney adjudicator dismisses the request for review of a QIC dismissal, or the QIC's dismissal is vacated and remanded, the ALJ or attorney adjudicator will issue a written decision affirming the QIC's dismissal. OMHA mails or otherwise transmits a copy of the decision to all the parties that received a copy of the QIC's dismissal.

(2) *Content of the notice.* The decision must be written in a manner calculated to be understood by a beneficiary and must include—

(i) The specific reasons for the determination, including a summary of the evidence considered and applicable authorities;

(ii) The procedures for obtaining additional information concerning the decision; and

(iii) Notification that the decision is binding and is not subject to further review, unless reopened and revised by the ALJ or attorney adjudicator.

(c) *Recommended decision.* An ALJ or attorney adjudicator issues a recommended decision if he or she is directed to do so in the Council's remand order. An ALJ or attorney adjudicator may not issue a recommended decision on his or her own motion. The ALJ or attorney adjudicator mails a copy of the recommended decision to all the parties at their last known address.

[82 FR 5119, Jan. 17, 2017, as amended at 84 FR 19871, May 7, 2019]

## § 405.1048 The effect of an ALJ's or attorney adjudicator's decision.

(a) The decision of the ALJ or attorney adjudicator on a request for hearing is binding on all parties unless—

(1) A party requests a review of the decision by the Council within the stated time period or the Council reviews the decision issued by an ALJ or attorney adjudicator under the procedures set forth in § 405.1110, and the Council issues a final decision or remand order or the appeal is escalated to Federal district court under the provisions at § 405.1132 and the Federal district court issues a decision.

## 42 CFR Ch. IV (10–1–23 Edition)

(2) The decision is reopened and revised by an ALJ or attorney adjudicator or the Council under the procedures explained in § 405.980;

(3) The expedited access to judicial review process at § 405.990 is used;

(4) The ALJ's or attorney adjudicator's decision is a recommended decision directed to the Council and the Council issues a decision; or

(5) In a case remanded by a Federal district court, the Council assumes jurisdiction under the procedures in § 405.1138 and the Council issues a decision.

(b) The decision of the ALJ or attorney adjudicator on a request for review of a QIC dismissal is binding on all parties unless the decision is reopened and revised by the ALJ or attorney adjudicator under the procedures in § 405.980.

[82 FR 5119, Jan. 17, 2017]

## § 405.1050 Removal of a hearing request from OMHA to the Council.

If a request for hearing is pending before OMHA, the Council may assume responsibility for holding a hearing by requesting that OMHA send the hearing request to it. If the Council holds a hearing, it conducts the hearing according to the rules for hearings before an ALJ. Notice is mailed to all parties at their last known address informing them that the Council has assumed responsibility for the case.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5118, Jan. 17, 2017]

## § 405.1052 Dismissal of a request for a hearing before an ALJ or request for review of a QIC dismissal.

(a) *Dismissal of request for hearing.* An ALJ dismisses a request for a hearing under any of the following conditions:

(1) Neither the party that requested the hearing nor the party's representative appears at the time and place set for the hearing, if—

(i) The party was notified before the time set for the hearing that the request for hearing might be dismissed for failure to appear, the record contains documentation that the party acknowledged the notice of hearing, and the party does not contact the ALJ within 10 calendar days after the hearing, or does contact the ALJ but the

ALJ determines the party did not demonstrate good cause for not appearing; or

(ii) The record does not contain documentation that the party acknowledged the notice of hearing, the ALJ sends a notice to the party at the last known address asking why the party did not appear, and the party does not respond to the ALJ's notice within 10 calendar days after receiving the notice or does contact the ALJ but the ALJ determines the party did not demonstrate good cause for not appearing.

(iii) In determining whether good cause exists under paragraphs (a)(1)(i) and (ii) of this section, the ALJ considers any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language), that the party may have.

(2) The person or entity requesting a hearing has no right to it under § 405.1002.

(3) The party did not request a hearing within the stated time period and the ALJ has not found good cause for extending the deadline, as provided in § 405.1014(e).

(4) The beneficiary whose claim is being appealed died while the request for hearing is pending and all of the following criteria apply:

(i) The request for hearing was filed by the beneficiary or the beneficiary's representative, and the beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the ALJ considers if the surviving spouse or estate remains liable for the services that were denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation on liability provisions based on the denial of the services at issue.

(ii) No other individuals or entities that have a financial interest in the case wish to pursue an appeal under § 405.1002.

(iii) No other individual or entity filed a valid and timely request for an ALJ hearing in accordance to § 405.1014.

(5) The ALJ dismisses a hearing request entirely or refuses to consider any one or more of the issues because a QIC, an ALJ or attorney adjudicator, or the Council has made a previous de-

termination or decision under this subpart about the appellant's rights on the same facts and on the same issue(s) or claim(s), and this previous determination or decision has become binding by either administrative or judicial action.

(6) The appellant abandons the request for hearing. An ALJ may conclude that an appellant has abandoned a request for hearing when OMHA attempts to schedule a hearing and is unable to contact the appellant after making reasonable efforts to do so.

(7) The appellant's request is not complete in accordance with § 405.1014(a)(1) or the appellant, other than an unrepresented beneficiary, did not send a copy of its request to the other parties in accordance with § 405.1014(d), after the appellant is provided with an opportunity to complete the request and/or send a copy of the request to the other parties.

(b) *Dismissal of request for review of a QIC dismissal.* An ALJ or attorney adjudicator dismisses a request for review of a QIC dismissal under any of the following conditions:

(1) The person or entity requesting a review of a dismissal has no right to it under § 405.1004.

(2) The party did not request a review within the stated time period and the ALJ or attorney adjudicator has not found good cause for extending the deadline, as provided in § 405.1014(e).

(3) The beneficiary whose claim is being appealed died while the request for review is pending and all of the following criteria apply:

(i) The request for review was filed by the beneficiary or the beneficiary's representative, and the beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the ALJ or attorney adjudicator considers if the surviving spouse or estate remains liable for the services that were denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation on liability provisions based on the denial of the services at issue.

(ii) No other individuals or entities that have a financial interest in the case wish to pursue an appeal under § 405.1004.

#### § 405.1054

(iii) No other individual or entity filed a valid and timely request for a review of the QIC dismissal in accordance to § 405.1014.

(4) The appellant's request is not complete in accordance with § 405.1014(a)(1) or the appellant, other than an unrepresented beneficiary, did not send a copy of its request to the other parties in accordance with § 405.1014(d), after the appellant is provided with an opportunity to complete the request and/or send a copy of the request to the other parties.

(c) *Withdrawal of request.* At any time before notice of the decision, dismissal, or remand is mailed, if only one party requested the hearing or review of the QIC dismissal and that party asks to withdraw the request, an ALJ or attorney adjudicator may dismiss the request for hearing or request for review of a QIC dismissal. This request for withdrawal may be submitted in writing, or a request to withdraw a request for hearing may be made orally at a hearing before the ALJ. The request for withdrawal must include a clear statement that the appellant is withdrawing the request for hearing or review of the QIC dismissal and does not intend to further proceed with the appeal. If an attorney or other legal professional on behalf of a beneficiary or other appellant files the request for withdrawal, the ALJ or attorney adjudicator may presume that the representative has advised the appellant of the consequences of the withdrawal and dismissal.

(d) *Notice of dismissal.* OMHA mails or otherwise transmits a written notice of the dismissal of the hearing or review request to the appellant, all parties who were sent a copy of the request for hearing or review at their last known address, and to CMS or a CMS contractor that is a party to the proceedings on a request for hearing. The notice states that there is a right to request that the ALJ or attorney adjudicator vacate the dismissal action. The appeal will proceed with respect to any other parties who filed a valid request for hearing or review regarding the same claim or disputed matter.

(e) *Vacating a dismissal.* If good and sufficient cause is established, the ALJ or attorney adjudicator may vacate his

#### 42 CFR Ch. IV (10–1–23 Edition)

or her dismissal of a request for hearing or review within 180 calendar days of the date of the notice of dismissal.

[82 FR 5119, Jan. 17, 2017, as amended at 84 FR 19871, May 7, 2019]

#### § 405.1054 Effect of dismissal of a request for a hearing or request for review of QIC dismissal.

(a) The dismissal of a request for a hearing is binding, unless it is vacated by the Council under § 405.1108(b), or vacated by the ALJ or attorney adjudicator under § 405.1052(e).

(b) The dismissal of a request for review of a QIC dismissal of a request for reconsideration is binding and not subject to further review unless it is vacated by the ALJ or attorney adjudicator under § 405.1052(e).

[82 FR 5120, Jan. 17, 2017]

#### § 405.1056 Remands of requests for hearing and requests for review.

(a) *Missing appeal determination or case record.* (1) If an ALJ or attorney adjudicator requests an official copy of a missing redetermination or reconsideration for an appealed claim in accordance with § 405.1034, and the QIC or another contractor does not furnish the copy within the time frame specified in § 405.1034, the ALJ or attorney adjudicator may issue a remand directing the QIC or other contractor to reconstruct the record or, if it is not able to do so, initiate a new appeal adjudication.

(2) If the QIC does not furnish the case file for an appealed reconsideration, an ALJ or attorney adjudicator may issue a remand directing the QIC to reconstruct the record or, if it is not able to do so, initiate a new appeal adjudication.

(3) If the QIC or another contractor is able to reconstruct the record for a remanded case and returns the case to OMHA, the case is no longer remanded and the reconsideration is no longer vacated, and any adjudication period that applies to the appeal in accordance with § 405.1016 is extended by the period between the date of the remand and the date that case is returned to OMHA.

(b) *No redetermination.* If an ALJ or attorney adjudicator finds that the QIC issued a reconsideration that addressed