

#### § 405.1114

beneficiary. For purposes of this section only, we define a representative as anyone who has accepted an appointment as the beneficiary's representative, except a member of the beneficiary's family, a legal guardian, or an individual who routinely acts on behalf of the beneficiary, such as a family member or friend who has a power of attorney.

[82 FR 5123, Jan. 17, 2017, as amended at 84 FR 19871, May 7, 2019]

#### § 405.1114 Dismissal of request for review.

The Council dismisses a request for review if the party requesting review did not file the request within the stated period of time and the time for filing has not been extended. The Council also dismisses the request for review if—

(a) The party asks to withdraw the request for review;

(b) The party does not have a right to request Council review; or

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

(1) 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 Council considers whether 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;

(2) No other individual or entity with a financial interest in the case wishes to pursue an appeal under § 405.1102;

(3) No other party to the ALJ's or attorney adjudicator's action filed a valid and timely review request under §§ 405.1102 and 405.1112.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5123, Jan. 17, 2017; 84 FR 19871, May 7, 2019]

#### § 405.1116 Effect of dismissal of request for Council review or request for hearing.

The dismissal of a request for Council review or denial of a request for review

#### 42 CFR Ch. IV (10–1–23 Edition)

of a dismissal issued by an ALJ or attorney adjudicator is binding and not subject to further review unless reopened and vacated by the Council. The Council's dismissal of a request for hearing is also binding and not subject to judicial review.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5123, Jan. 17, 2017]

#### § 405.1118 Obtaining evidence from the Council.

A party may request and receive a copy of all or part of the record of the ALJ's or attorney adjudicator's action, including any index of the administrative record, documentary evidence, and a copy of the audio recording of the oral proceedings. However, the party may be asked to pay the costs of providing these items. If a party requests evidence from the Council and an opportunity to comment on that evidence, the time beginning with the Council's receipt of the request for evidence through the expiration of the time granted for the party's response will not be counted toward the 90 calendar day adjudication deadline.

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65337, Dec. 9, 2009; 82 FR 5123, Jan. 17, 2017]

#### § 405.1120 Filing briefs with the Council.

Upon request, the Council will give the party requesting review, as well as all other parties, a reasonable opportunity to file briefs or other written statements about the facts and law relevant to the case. Any party who submits a brief or statement must send a copy to all of the other parties. Unless the party requesting review files the brief or other statement with the request for review, the time beginning with the date of receipt of the request to submit the brief and ending with the date the brief is received by the Council will not be counted toward the adjudication timeframe set forth in § 405.1100. The Council may also request, but not require, CMS or its contractor to file a brief or position paper if the Council determines that it is necessary to resolve the issues in the case. The Council will not draw any adverse inference if CMS or a contractor either