

§ 405.1132

§ 405.1132 Request for escalation to Federal court.

(a) If the Council does not issue a decision or dismissal or remand the case to an ALJ or attorney adjudicator within the adjudication period specified in § 405.1100, or as extended as provided in this subpart, the appellant may request that the appeal, other than an appeal of an ALJ or attorney adjudicator dismissal, be escalated to Federal district court. Upon receipt of a request for escalation, the Council may—

(1) Issue a decision or dismissal or remand the case to an ALJ or attorney adjudicator, if that action is issued within the latter of 5 calendar days of receipt of the request for escalation or 5 calendar days from the end of the applicable adjudication time period set forth in § 405.1100; or

(2) If the Council is not able to issue a decision or dismissal or remand as set forth in paragraph (a)(1) of this section, it will send a notice to the appellant acknowledging receipt of the request for escalation and confirming that it is not able to issue a decision, dismissal or remand order within the statutory time frame.

(b) A party may file an action in a Federal district court within 60 calendar days after the date it receives the Council's notice that the Council is not able to issue a final decision, dismissal order, or remand order unless the party is appealing an ALJ or attorney adjudicator dismissal.

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65338, Dec. 9, 2009; 82 FR 5124, Jan. 17, 2017]

§ 405.1134 Extension of time to file action in Federal district court.

(a) Any party to the Council's decision or to a request for EAJR that has been certified by the review entity other than CMS may request that the time for filing an action in a Federal district court be extended.

(b) The request must—

(1) Be in writing.

(2) Give the reasons why the action was not filed within the stated time period.

(3) Be filed with the Council.

(c) If the party shows that he or she had good cause for missing the dead-

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line, the time period will be extended. To determine whether good cause exists, the Council uses the standards specified in § 405.942(b)(2) or (b)(3).

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5124, Jan. 17, 2017]

§ 405.1136 Judicial review.

(a) *General rules.* (1) To the extent authorized by sections 1869, 1876(c)(5)(B), and 1879(d) of the Act, a party to a Council decision, or an appellant who requests escalation to Federal district court if the Council does not complete its review of the ALJ's or attorney adjudicator's decision within the applicable adjudication period, may obtain a court review if the amount remaining in controversy satisfies the requirements of § 405.1006(c).

(2) If the Council's adjudication period set forth in § 405.1100 expires and the appellant does not request escalation to Federal district court, the case remains with the Council until a final decision, dismissal order, or remand order is issued.

(b) *Court in which to file civil action.*

(1) Any civil action described in paragraph (a) of this section must be filed in the district court of the United States for the judicial district in which the party resides or where such individual, institution, or agency has its principal place of business.

(2) If the party does not reside within any judicial district, or if the individual, institution, or agency does not have its principal place of business within any such judicial district, the civil action must be filed in the District Court of the United States for the District of Columbia.

(c) *Time for filing civil action.* (1) Any civil action described in paragraph (a) of this section must be filed within the time periods specified in § 405.1130, § 405.1132, or § 405.1134, as applicable.

(2) For purposes of this section, the date of receipt of the notice of the Council's decision or the Council's notice that it is not able to issue a decision within the statutory timeframe shall be presumed to be 5 calendar days after the date of the notice, unless there is a reasonable showing to the contrary.