

(e) *Contractor jurisdictional dismissal decision must not include factual findings and legal conclusions under paragraph (b)(1) of this section.* If the contractor hearing officer(s) issues a jurisdictional dismissal decision regarding the specific item under appeal (in accordance with § 405.1814(c)), the contractor hearing officer(s)'s specific findings of fact and conclusions of law (in accordance with paragraph (b)(1) of this section) on the question of whether the provider's cost report included an appropriate claim for the specific item must not be included in such jurisdictional dismissal decision.

(f) Effects of the contractor hearing officer(s)'s factual findings and legal conclusions under paragraph (b)(1) of this section when part of a final contractor hearing decision. If the contractor hearing officer(s) determines, as part of a final and binding contractor hearing decision (pursuant to § 405.1833 and paragraphs (b)(1) and (d) of this section), that the provider's cost report—

(1) Included an appropriate claim for the specific item under appeal (as prescribed in § 413.24(j) of this chapter), the specific item is reimbursable in accordance with Medicare policy, but only if the contractor hearing officer(s) further determines in such final contractor hearing decision that all the other substantive reimbursement requirements for the specific item are also satisfied; or

(2) Did not include an appropriate cost report claim for the specific item under appeal, the specific item is not reimbursable, regardless of whether the contractor hearing officer(s) further determines in such final contractor hearing decision that the other substantive reimbursement requirements for the specific item are or are not satisfied.

[80 FR 70598, Nov. 13, 2015]

**§ 405.1833 Effect of contractor hearing decision.**

A contractor hearing decision issued in accordance with § 405.1831 of this subpart is final and binding on all parties to the contractor hearing and on the contractor, unless the hearing decision is reviewed by a CMS reviewing official in accordance with § 405.1834 of

this subpart or reopened and revised by the contractor hearing officer(s) in accordance with § 405.1885 through § 405.1889 of this subpart. Final contractor hearing decisions are subject to the provisions of § 405.1803(d) of this subpart.

[73 FR 30248, May 23, 2008; 73 FR 49356, Aug. 21, 2008]

**§ 405.1834 CMS reviewing official procedure.**

(a) *Scope.* A provider that is a party to, and dissatisfied with, a final decision by the contractor hearing officer(s), upon submitting a request that meets the requirements of paragraph (c) of this section, is entitled to further administrative review of the decision, or the decision may be reviewed at the discretion of the Administrator. No other individual, entity, or party has the right to the review. The review is conducted on behalf of the Administrator by a designated CMS reviewing official who considers whether the decision of the contractor hearing officer(s) is consistent with the controlling legal authority (as described in § 405.1834(e)(1) of this subpart) and the evidence in the record. Based on the review, the CMS reviewing official issues a decision on behalf of the Administrator.

(b) *General rules.* (1) A CMS reviewing official may immediately review any final decision of the contractor hearing officer(s) as specified in paragraph (b)(2) of this section.

(i) Nonfinal decisions and other nonfinal actions by the contractor hearing officer(s) are not immediately reviewable, except as provided in paragraph (b)(3) of this section.

(ii) The CMS reviewing official exercises this review authority in response to a request from a provider party to the appeal that meets the requirements of paragraph (c) of this section or may exercise his or her discretion to take own motion review.

(2) A CMS reviewing official may immediately review the following:

(i) Any final jurisdictional dismissal decision by the contractor hearing officer(s), including any finding that the provider failed to demonstrate good cause for extending the time in which to request a hearing (as described in

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§§ 405.1813(e)(1) and 405.1814(c)(3) of this subpart).

(ii) Any final contractor hearing decision (as described in § 405.1831 of this subpart).

(iii) If the CMS reviewing official reviews a contractor hearing decision regarding a specific item, then the CMS reviewing official's review of such a contractor hearing decision will include, and any decision issued by the CMS reviewing official (under paragraph (e) of this section) will address, the contractor hearing officer(s)'s specific findings of fact and conclusions of law in such contractor hearing decision (as specified in § 405.1832(b)(1) and (d)) on the question of whether the provider's cost report included an appropriate claim for the specific item under appeal (as specified in § 413.24(j) of this chapter).

(3) Nonfinal decisions and other nonfinal actions by the contractor hearing officer(s) are not subject to the CMS reviewing official procedure until the contractor hearing officer(s) issues a final decision as specified in paragraph (b)(2) of this section (as described in §§ 405.1813(e)(2), 405.1814(c) and (d), and 405.1821(d)(1) of this subpart), except that the CMS reviewing official may immediately review a ruling, authorizing discovery or disclosure of a matter, where there is a claim of privilege or other protection from disclosure such as case preparation, confidentiality, or undue burden.

(4) In order to facilitate the Administrator's exercise of this review authority, the contractor hearing officer(s) must promptly send copies of any decision specified in paragraph (b)(2) of this section or in § 405.1821(d)(2) of this subpart to the appropriate component of CMS (currently the Center for Medicare Management).

(i) All requests for review by a CMS reviewing official and all written submissions to a CMS reviewing official under paragraphs (c) and (d) of this section also must be sent to the appropriate component of CMS.

(ii) The appropriate CMS component examines each contractor hearing officer decision that is reviewable under paragraph (b)(2) of this section or § 405.1821(d)(2) of this subpart, along with any review requests and any other

submissions made by a party in accordance with the provisions of this section, in order to assist the Administrator's exercise of this review authority.

(c) *Request for review.* (1) A provider's request for review by a CMS reviewing official is granted if—

(i) The date of receipt by the appropriate CMS component of the review request is no later than 60 days after the date of receipt by the provider of the contractor hearing officer decision; or

(ii) The request seeks review of a decision listed in paragraph (b)(2) of this section, and the provider complies with the requirements of paragraph (c)(2) of this section.

(2) The provider must submit its request for review in writing, attach a copy of the contractor decision for which it seeks review and include a brief description of all of the following:

(i) Those aspects of the contractor hearing officer decision with which the provider is dissatisfied.

(ii) The reasons for the provider's dissatisfaction.

(iii) Any argument or record evidence the provider believes supports its position.

(iv) Any additional, extra-record evidence relied on by the provider, along with a demonstration that such evidence was improperly excluded from the contractor hearing (as described in § 405.1823 of this subpart).

(3) A provider request for immediate review of a contractor hearing officer ruling authorizing discovery or disclosure in accordance with paragraph (b)(3) of this section must—

(i) Be made as soon as practicable after the ruling is made, but in no event later than 5 business days after the date it received notice of the ruling; and

(ii) State the reason(s) why the ruling is in error and the potential harm that may be caused if immediate review is not granted.

(d) *Own motion review.* (1) The Administrator has discretion to take own motion review of a contractor hearing officer decision (regardless of whether the decision was favorable or unfavorable to the provider) or other reviewable action.

(2) In order to exercise this authority, the CMS reviewing official must, no later than 60 days after the date of the contractor hearing officer's decision, notify the parties and the contractor that he or she intends to review the contractor hearing officer decision or other reviewable action.

(3) In the notice, the CMS reviewing official identifies with particularity the issues that are to be reviewed, and gives each party (as described in § 405.1815 of this subpart) and affected nonparty a reasonable period to comment on the issues through a written submission complying with paragraph (c)(2) of this section.

(e) *Review procedure.* (1) In reviewing a contractor hearing officer decision specified in paragraph (b)(2) of this section, the CMS reviewing official must—

(i) Comply with all applicable law, regulations, and CMS Rulings (as described in § 401.108 of this chapter), and afford great weight to other interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS;

(ii) Subject to paragraph (e)(1)(iii) of this section, limit the review to the record of the proceedings before the contractor hearing officer(s) (as described in § 405.1827 of this subpart) and any written submissions by the parties under paragraphs (c)(2) or (d) of this section; and

(iii) Consider additional, extra-record evidence only if he or she determines that the evidence was improperly excluded from the contractor hearing (as described in § 405.1823 of this subpart).

(2) Review of a contractor decision specified in paragraph (b)(2) of this section is limited to a hearing on the written record in accordance with paragraph (e)(1)(ii) of this section, unless the CMS reviewing official determines that—

(i) Additional, extra-record evidence may be considered in accordance with paragraph (e)(1)(iii) of this section;

(ii) An oral hearing is necessary for consideration of the extra-record evidence; and

(iii) It is not necessary or appropriate to remand the matter to the contractor hearing officer(s).

(3) Upon completion of the review of a contractor hearing decision specified in paragraph (b)(2) of this section, the CMS reviewing official issues a written decision that affirms, reverses, modifies, or remands the contractor hearing decision. A copy of the decision must be sent promptly to each party, to the contractor, and to the appropriate component of CMS (currently the Center for Medicare Management).

(f) *Effect of a decision: Remand.* (1) A decision of affirmation, reversal, or modification by the CMS reviewing official is final and binding on each party and the contractor. No further review or appeal of a decision is available, but the decision may be reopened and revised by a CMS reviewing official in accordance with § 405.1885 through § 405.1889 of this subpart. Decisions of a CMS reviewing official are subject to the provisions of § 405.1803(d) of this subpart. A decision by a CMS reviewing official remanding an appeal to the contractor hearing officer(s) for further proceedings under paragraph (f)(2) of this section is not a final decision.

(2) A remand to the contractor hearing officer(s) by the CMS reviewing official must—

(i) Vacate the contractor hearing officer decision;

(ii) Be governed by the same criteria that apply to remands by the Administrator to the Board under § 405.1875(f)(2) of this subpart, and require the contractor hearing officer(s) to take specific actions on remand; and

(iii) Result in the contractor hearing officer(s) taking the actions required on remand and issuing a new contractor hearing decision in accordance with §§ 405.1831 and 405.1833 of this subpart.

[73 FR 30248, May 23, 2008; 73 FR 49356 Aug. 21, 2008, as amended at 80 FR 70599, Nov. 13, 2015; 85 FR 59019, Sept. 18, 2020]

**§ 405.1835 Right to Board hearing; contents of, and adding issues to, hearing request.**

(a) Right to hearing on final contractor determination. A provider (but no other individual, entity, or party) has a right to a Board hearing, as a single provider appeal, with respect to a