

by the reopening may be subsequently appealed.

(g) *Effect of a revised determination or decision.* A revised determination or decision is binding unless it is appealed or otherwise reopened.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5108, Jan. 17, 2017]

§ 405.986 Good cause for reopening.

(a) *Establishing good cause for reopening.* Good cause may be established when—

(1) There is new and material evidence that—

(i) Was not available or known at the time of the determination or decision; and

(ii) May result in a different conclusion; or

(2) The evidence that was considered in making the determination or decision clearly shows on its face that an obvious error was made at the time of the determination or decision.

(b) *Change in substantive law or interpretative policy.* A change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, or a change in legal interpretation or policy by SSA in a regulation, SSA ruling, or SSA general instruction in entitlement appeals, whether made in response to judicial precedent or otherwise, is not a basis for reopening a determination or hearing decision under this section. This provision does not preclude contractors from conducting reopenings to effectuate coverage decisions issued under the authority granted by section 1869(f) of the Act.

(c) *Third party payer error.* A request to reopen a claim based upon a third party payer's error in making a primary payment determination when Medicare processed the claim in accordance with the information in its system of records or on the claim form does not constitute good cause for reopening.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005; 86 FR 65660, Nov. 19, 2021]

EXPEDITED ACCESS TO JUDICIAL REVIEW

§ 405.990 Expedited access to judicial review.

(a) *Process for expedited access to judicial review.* (1) For purposes of this section, a “review entity” means an entity of up to three reviewers who are ALJs or members of the Departmental Appeals Board (DAB), as determined by the Secretary.

(2) In order to obtain expedited access to judicial review (EAJR), a review entity must certify that the Council does not have the authority to decide the question of law or regulation relevant to the matters in dispute and that there is no material issue of fact in dispute.

(3) A party may make a request for EAJR only once with respect to a question of law or regulation for a specific matter in dispute in an appeal.

(b) *Conditions for making the expedited appeals request.* (1) A party may request EAJR in place of an ALJ hearing or Council review if the following conditions are met:

(i) A QIC has made a reconsideration determination and the party has filed a request for—

(A) An ALJ hearing in accordance with § 405.1002 and a decision, dismissal order, or remand order of the ALJ or attorney adjudicator has not been issued;

(B) Council review in accordance with § 405.1102 and a final decision, dismissal order, or remand order of the Council has not been issued; or

(ii) The appeal has been escalated from the QIC to OMHA for an ALJ hearing after the period described in § 405.970(a) and § 405.970(b) has expired, and the QIC does not issue a decision or dismissal order within the timeframe described in § 405.970(e).

(2) The requestor is a party, as defined in paragraph (e) of this section.

(3) The amount remaining in controversy meets the requirements of § 405.1006(b) or (c).

(4) If there is more than one party to the reconsideration, hearing, or Council review, each party concurs, in writing, with the request for the EAJR.

(5) There are no material issues of fact in dispute.