

§ 423.2112

may remand the case to an ALJ or attorney adjudicator for further proceedings, or may dismiss a hearing request.

(3) The Council must issue its action no later than 90 calendar days after receipt of the CMS or the IRE referral, unless the 90 calendar day period has been extended as provided in this subpart.

(4) The Council may not issue its action before the 20 calendar day comment period has expired, unless it determines that the agency's referral does not provide a basis for reviewing the case.

(5) If the Council declines to review a decision or dismissal on its own motion, the ALJ's or attorney adjudicator's decision or dismissal is binding.

(e) *Referral timeframe.* For purposes of this section, the date of receipt of the ALJ's or attorney adjudicator's decision or dismissal is presumed to be 5 calendar days after the date of the notice of the decision or dismissal, unless there is evidence to the contrary.

[82 FR 5137, Jan. 17, 2017, as amended at 84 FR 19874, May 7, 2019]

§ 423.2112 Content of request for review.

(a)(1) The request for Council review must be filed with the entity specified in the notice of the ALJ's or attorney adjudicator's action.

(2) The request for review must be in writing and may be made on a standard form, except for requests for expedited reviews which may be made orally.

(3) The Council must document all oral requests in writing and maintain the documentation in the case file.

(4) A written request that is not made on a standard form or, for expedited requests, an oral request, is accepted if it includes the enrollee's name and telephone number, the plan name; Medicare number; the ALJ appeal number; the specific Part D drug(s) for which the review is requested; a statement that the enrollee is requesting an expedited review, if applicable; and the name of the enrollee or the representative of the enrollee.

(b) The request for review must identify the parts of the ALJ or attorney adjudicator action with which the en-

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rollee requesting review disagrees and explain why he or she disagrees with the ALJ's or attorney adjudicator's decision, dismissal, or other determination being appealed.

(c) The Council will limit its review of an ALJ's or attorney adjudicator's actions to those exceptions raised by the enrollee in the request for review, unless the enrollee is unrepresented. For purposes of this section only, a representative is either anyone with a valid appointment as the enrollee's representative or is a member of the enrollee's family, a legal guardian or an individual who routinely acts on behalf of the enrollee, such as a family member or friend who has a power of attorney.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5138, Jan. 17, 2017; 84 FR 19874, May 7, 2019]

§ 423.2114 Dismissal of request for review.

The Council dismisses a request for review if the enrollee 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 enrollee asks to withdraw the request for review;

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

(c) The enrollee died while the request for review is pending and the enrollee's estate or representative, if any, either has no remaining financial interest in the case or does not want to continue the appeal.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5138, Jan. 17, 2017]

§ 423.2116 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 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