

at his or her last known address. The notice tells the enrollee that the case was sent to the Council, explains the rules for filing briefs or other written statements with the Council, and includes a copy of the recommended decision.

(4) *Filing briefs with the Council when ALJ or attorney adjudicator issues recommended decision.* (i) An enrollee may file with the Council briefs or other written statements about the facts and law relevant to the case within 20 calendar days of the date on the recommended decision or with the request for review for expedited appeals. An enrollee may ask the Council for additional time to file a brief or written statement. The Council will extend this period, as appropriate, if the enrollee shows that he or she has good cause for requesting the extension.

(ii) All other rules for filing briefs with and obtaining evidence from the Council follow the procedures explained in this subpart.

(5) *Procedures before the Council.* (i) The Council, after receiving a recommended decision, will conduct proceedings and issue its decision or dismissal according to the procedures explained in this subpart.

(ii) If the Council determines that more evidence is required, it may again remand the case to an ALJ or attorney adjudicator for further inquiry into the issues, rehearing if applicable, receipt of evidence, and another decision or recommended decision. However, if the Council decides that it can get the additional evidence more quickly, it will take appropriate action.

(b) *When the Council must remand a case to the Part D IRE.* The Council will remand a case to the appropriate Part D IRE if the Council determines that the enrollee wishes evidence on his or her change in condition after the coverage determination or at-risk determination to be considered in the appeal.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5138, Jan. 17, 2017; 83 FR 16754, Apr. 16, 2018]

#### § 423.2128 Action of the Council.

(a) After it has reviewed all the evidence in the administrative record and any additional evidence received, sub-

ject to the limitations on Council consideration of additional evidence in § 423.2122, the Council will make a decision or remand the case to an ALJ or attorney adjudicator.

(b) The Council may adopt, modify, or reverse the ALJ or attorney adjudicator decision or recommended decision.

(c) The Council mails a copy of its decision to the enrollee at his or her last known address, to CMS, to the IRE, and to the Part D plan sponsor.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5139, Jan. 17, 2017]

#### § 423.2130 Effect of the Council's decision.

The Council's decision is final and binding unless a Federal District Court issues a decision modifying the Council's decision or the decision is revised as the result of a reopening in accordance with § 423.1980. An enrollee may file an action in a Federal District Court within 60 calendar days after the date the enrollee receives written notice of the Council's decision.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5139, Jan. 17, 2017]

#### § 423.2134 Extension of time to file action in Federal District Court.

(a) An enrollee 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 enrollee shows that he or she had good cause for missing the deadline, 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) of this chapter.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5139, Jan. 17, 2017]

#### § 423.2136 Judicial review.

(a) *General rule*—(1) *Review of Council decision.* To the extent authorized by sections 1876(c)(5)(B) and 1860D-4(h) of the Act, an enrollee may obtain a court review of a Council decision if—