

electronically, mechanically or stenographically reported. Except for privileged information and proprietary data that are filed under seal, all evidence upon which the ALJ relies for decision must be admitted into the public record. All medical reports, exhibits, and any other pertinent document, either in whole or in material part, must be offered, marked for identification, and retained in the case record.

§ 426.447 Issuance and notification of an ALJ's decision.

An ALJ must issue to all parties to the LCD review, within 90 days of closing the LCD review record to the taking of evidence, one of the following:

- (a) A written decision, including a description of appeal rights.
- (b) A written notification stating that a decision is pending, and an approximate date of issuance for the decision.

§ 426.450 Mandatory provisions of an ALJ's decision.

(a) *Findings.* An ALJ's decision must include one of the following:

- (1) A determination that the provision of the LCD is valid under the reasonableness standard.
- (2) A determination that the provision of the LCD is not valid under the reasonableness standard.
- (3) A statement dismissing the complaint regarding the LCD and a rationale for the dismissal.
- (4) A determination that the LCD record is complete and adequate to support the validity of the LCD provisions under the reasonableness standard.

(b) *Other information.* An ALJ's decision must include all of the following:

- (1) The date of issuance.
- (2) The docket number of the LCD review.
- (3) A statement as to whether the aggrieved party has filed a claim for the service(s) named in the complaint, the date(s)-of-service, and the disposition, if known.
- (4) A basis for concluding that the LCD was or was not valid based on the application of the reasonableness standard to the record before the ALJ, including the contractor's:

- (i) Findings of fact.
- (ii) Interpretations of law.
- (iii) Applications of fact to law.

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(5) A summary of the evidence reviewed. If proprietary or privileged data were submitted under seal, the decision must state whether the data were material and what role they played in the determination, but without disclosing the substance or contents of the evidence under seal. A separate statement of the rationale for the ALJ's treatment of the sealed evidence must be prepared and kept under seal itself. If the ALJ decision is appealed to the Board, this statement must be provided to the Board under seal.

(6) A statement regarding appeal rights.

§ 426.455 Prohibited provisions of an ALJ's decision.

An ALJ's decision may not do any of the following:

- (a) Order CMS or its contractors to add any language to a provision or provisions of an LCD.
- (b) Order CMS or its contractors to pay a specific claim.
- (c) Set a time limit for CMS or its contractors to establish a new or revised LCD.
- (d) Review or evaluate an LCD other than the LCD under review.
- (e) Include a requirement for CMS or its contractors that specifies payment, coding, or systems changes for an LCD, or deadlines for implementing these types of changes.
- (f) Order or address how a contractor(s) must implement an LCD.

§ 426.457 Optional provisions of an ALJ's decision.

When appropriate, the ALJ may limit a decision holding invalid a specific provision(s) of an LCD to specific clinical indications and for similar conditions.

§ 426.458 ALJ's LCD review record.

(a) *Elements of the ALJ's LCD review record furnished to the public.* Except as provided in paragraph (b) of this section, the ALJ's LCD review record consists of any document or material that the ALJ compiled or considered during the LCD review, including, but not limited to, the following:

- (1) The LCD complaint.