

inferences if CMS or the contractor decides not to be a party to the hearing.

(b) *How an election is made.* If CMS or a contractor elects to be a party to the hearing, it must send written notice to the ALJ and the parties who were sent a copy of the notice of hearing of its intent to be a party to the hearing.

(c) *Roles and responsibilities of CMS or a contractor as a party.* (1) As a party, CMS or a contractor may file position papers, submit evidence, provide testimony to clarify factual or policy issues, call witnesses or cross-examine the witnesses of other parties.

(2) CMS or contractor position papers, written testimony, and evidentiary submissions are subject to the following:

(i) Any position paper, written testimony, and/or evidence must be submitted no later than 5 calendar days prior to the hearing unless the ALJ grants additional time to submit the position paper, written testimony, and/or evidence.

(ii) A copy of any position paper, written testimony, and/or evidence it submits to OMHA must be sent within the same time frame specified in paragraph (c)(2)(i) of this section to the parties who were sent a copy of the notice of hearing.

(iii) If CMS or a contractor fails to send a copy of its position paper, written testimony, and/or evidence to the parties or fails to submit its position paper, written testimony, and/or evidence within the time frames described in this section, the position paper, written testimony, and/or evidence will not be considered in deciding the appeal.

(d) *Limitation on participating in a hearing.* (1) If CMS and one or more contractors, or multiple contractors, file an election to be a party to the hearing, the first entity to file its election after the notice of hearing is issued is made a party to the hearing and the other entities are made participants in the proceedings under § 405.1010, subject to § 405.1010(d)(1) and (3), unless the ALJ grants leave to an entity to also be a party to the hearing in accordance with paragraph (d)(2) of this section.

(2) If CMS or a contractor filed an election to be a party in accordance

with this section but is precluded from being made a party under paragraph (d)(1) of this section, the ALJ may grant leave to be a party to the hearing if the ALJ determines that the entity's participation as a party is necessary for a full examination of the matters at issue.

(e) *Invalid election.* (1) An ALJ may determine that a CMS or contractor election is invalid under this section if the request for hearing was filed by an unrepresented beneficiary, the election was not timely, the election was not sent to the correct parties, or CMS or a contractor had already filed an election to be a party to the hearing and the ALJ did not determine that the entity's participation as a party is necessary for a full examination of the matters at issue.

(2) If an election is determined to be invalid, a written notice must be sent to the entity that submitted the election and the parties who were sent the notice of hearing.

(i) If the election was submitted after the hearing occurred, the written notice of invalid election must be sent no later than the date the decision, dismissal, or remand notice is mailed.

(ii) If the election was submitted before the hearing occurs, the written notice of invalid election must be sent prior to the hearing. If the notice would be sent fewer than 5 calendar days before the hearing is scheduled to occur, oral notice must be provided to the entity that submitted the election, and the written notice to the entity and the parties who were sent the notice of hearing must be sent as soon as possible after the oral notice is provided.

[82 FR 5111, Jan. 17, 2017, as amended at 84 FR 19870, May 7, 2019]

**§ 405.1014 Request for an ALJ hearing or a review of a QIC dismissal.**

(a) *Content of the request.* (1) The request for an ALJ hearing or a review of a QIC dismissal must be made in writing. The request must include all of the following—

(i) The name, address, and Medicare health number of the beneficiary whose

claim is being appealed, and the beneficiary's telephone number if the beneficiary is the appealing party and not represented.

(ii) The name, address, and telephone number, of the appellant, when the appellant is not the beneficiary.

(iii) The name, address, and telephone number, of the designated representative, if any.

(iv) The Medicare appeal number or document control number, if any, assigned to the QIC reconsideration or dismissal notice being appealed.

(v) The dates of service of the claim(s) being appealed, if applicable.

(vi) The reasons the appellant disagrees with the QIC's reconsideration or other determination being appealed.

(2) The appellant must submit a statement of any additional evidence to be submitted and the date it will be submitted.

(3) Special rule for appealing statistical sample and/or extrapolation. If the appellant disagrees with how a statistical sample and/or extrapolation was conducted, the appellant must—

(i) Include the information in paragraphs (a)(1) and (2) of this section for each sample claim that the appellant wishes to appeal;

(ii) File the request for hearing for all sampled claims that the appellant wishes to appeal within 60 calendar days of the date the party receives the last reconsideration for the sample claims, if they were not all addressed in a single reconsideration; and

(iii) Assert the reasons the appellant disagrees with how the statistical sample and/or extrapolation was conducted in the request for hearing.

(b) *Complete request required.* (1) A request must contain the information in paragraph (a)(1) of this section to the extent the information is applicable, to be considered complete. If a request is not complete, the appellant will be provided with an opportunity to complete the request, and if an adjudication time frame applies, it does not begin until the request is complete. If the appellant fails to provide the information necessary to complete the request within the time frame provided, the appellant's request for hearing or review will be dismissed.

(2) If supporting materials submitted with a request clearly provide information required for a complete request, the materials will be considered in determining whether the request is complete.

(c) *When and where to file.* The request for an ALJ hearing or request for review of a QIC dismissal must be filed—

(1) Within 60 calendar days from the date the party receives notice of the QIC's reconsideration or dismissal, except as provided in paragraph (a)(3)(ii) of this section for appeals of extrapolations;

(2) With the office specified in the QIC's reconsideration or dismissal. If the request for hearing is timely filed with an office other than the office specified in the QIC's reconsideration, the request is not treated as untimely, and any applicable time frame specified in § 405.1016 for deciding the appeal begins on the date the office specified in the QIC's reconsideration or dismissal receives the request for hearing. If the request for hearing is filed with an office, other than the office specified in the QIC's reconsideration or dismissal, OMHA must notify the appellant of the date the request was received in the correct office and the commencement of any applicable adjudication time frame.

(d) *Copy requirement.* (1) The appellant must send a copy of the request for hearing or request for review of a QIC dismissal to the other parties who were sent a copy of the QIC's reconsideration or dismissal. If additional materials submitted with the request are necessary to provide the information required for a complete request in accordance with paragraph (b) of this section, copies of the materials must be sent to the parties as well (subject to authorities that apply to disclosing the personal information of other parties). If additional evidence is submitted with the request for hearing, the appellant may send a copy of the evidence, or briefly describe the evidence pertinent to the party and offer to provide copies of the evidence to the party at the party's request (subject to authorities that apply to disclosing the evidence).

(2) Evidence that a copy of the request for hearing or request for review of a QIC dismissal, or a copy of submitted evidence or a summary thereof, was sent in accordance with paragraph (d)(1) of this section includes—

(i) Certification on the standard form for requesting an ALJ hearing or requesting a review of a QIC dismissal that a copy of the request is being sent to the other parties;

(ii) An indication, such as a copy or “cc” line, on a request for hearing or request for review of a QIC dismissal that a copy of the request and any applicable attachments or enclosures are being sent to the other parties, including the name and address of the recipient;

(iii) An affidavit or certificate of service that identifies the name and address of the recipient, and what was sent to the recipient; or

(iv) A mailing or shipping receipt that identifies the name and address of the recipient, and what was sent to the recipient.

(3) If the appellant, other than an unrepresented beneficiary, fails to send a copy of the request for hearing or request for review of a QIC dismissal, any additional materials, or a copy of submitted evidence or a summary thereof, as described in paragraph (d)(1) of this section, the appellant will be provided with an additional opportunity to send the request, materials, and/or evidence or summary thereof, and if an adjudication time frame applies, it begins upon receipt of evidence that the request, materials, and/or evidence or summary thereof were sent. If the appellant, other than an unrepresented beneficiary, again fails to provide evidence that the request, materials, and/or evidence or summary thereof were sent within the additional time frame provided to send the request, materials, and/or evidence or summary thereof, the appellant’s request for hearing or request for review of a QIC dismissal will be dismissed.

(e) *Extension of time to request a hearing or review.* (1) If the request for hearing or review of a QIC dismissal is not filed within 60 calendar days of receipt of the QIC’s reconsideration or dismissal, an appellant may request an

extension for good cause (See § 405.942(b)(2) and (3)).

(2) Any request for an extension of time must be in writing, give the reasons why the request for a hearing or review was not filed within the stated time period, and must be filed with the request for hearing or request for review of a QIC dismissal, or upon notice that the request may be dismissed because it was not timely filed, with the office specified in the notice of reconsideration or dismissal.

(3) An ALJ or attorney adjudicator may find there is good cause for missing the deadline to file a request for an ALJ hearing or request for review of a QIC dismissal, or there is no good cause for missing the deadline to file a request for a review of a QIC dismissal, but only an ALJ may find there is no good cause for missing the deadline to file a request for an ALJ hearing. If good cause is found for missing the deadline, the time period for filing the request for hearing or request for review of a QIC dismissal will be extended. To determine whether good cause for late filing exists, the ALJ or attorney adjudicator uses the standards set forth in § 405.942(b)(2) and (3).

(4) If a request for hearing is not timely filed, any applicable adjudication period in § 405.1016 begins the date the ALJ or attorney adjudicator grants the request to extend the filing deadline.

(5) A determination granting a request to extend the filing deadline is not subject to further review.

[82 FR 5112, Jan. 17, 2017, as amended at 84 FR 19870, May 7, 2019]

**§ 405.1016 Time frames for deciding an appeal of a QIC reconsideration or escalated request for a QIC reconsideration.**

(a) *Adjudication period for appeals of QIC reconsiderations.* When a request for an ALJ hearing is filed after a QIC has issued a reconsideration, an ALJ or attorney adjudicator issues a decision, dismissal order, or remand to the QIC, as appropriate, no later than the end of the 90 calendar day period beginning on the date the request for hearing is received by the office specified in the QIC’s notice of reconsideration, unless