

(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

the 90 calendar day period has been extended as provided in this subpart.

(b) *When the adjudication period begins.* (1) Unless otherwise specified in this subpart, the adjudication period specified in paragraph (a) of this section begins on the date that a timely filed request for hearing is received by the office specified in the QIC's reconsideration, or, if it is not timely filed, the date that the ALJ or attorney adjudicator grants any extension to the filing deadline.

(2) If the Council remands a case and the case was subject to an adjudication time frame under paragraph (a) or (c) of this section, the remanded appeal will be subject to the adjudication time frame of paragraph (a) of this section beginning on the date that OMHA receives the Council remand.

(c) *Adjudication period for escalated requests for QIC reconsiderations.* When an appeal is escalated to OMHA because the QIC has not issued a reconsideration determination within the period specified in §405.970, an ALJ or attorney adjudicator issues a decision, dismissal order, or remand to the QIC, as appropriate, no later than the end of the 180 calendar day period beginning on the date that the request for escalation is received by OMHA in accordance with §405.970, unless the 180 calendar day period is extended as provided in this subpart.

(d) *Waivers and extensions of adjudication period.* (1) At any time during the adjudication process, the appellant may waive the adjudication period specified in paragraphs (a) and (c) of this section. The waiver may be for a specific period of time agreed upon by the ALJ or attorney adjudicator and the appellant.

(2) The adjudication periods specified in paragraphs (a) and (c) of this section are extended as otherwise specified in this subpart, and for the following events—

(i) The duration of a stay of action on adjudicating the claims or matters at issue ordered by a court or tribunal of competent jurisdiction; or

(ii) The duration of a stay of proceedings granted by an ALJ or attorney adjudicator on a motion by an appellant, provided no other party also

filed a request for hearing on the same claim at issue.

(e) *Effect of exceeding adjudication period.* If an ALJ or attorney adjudicator fails to issue a decision, dismissal order, or remand to the QIC within an adjudication period specified in this section, subject to paragraphs (b) and (d) of this section, the party that filed the request for hearing may escalate the appeal in accordance with paragraph (f) of this section. If the party that filed the request for hearing does not elect to escalate the appeal, the appeal remains pending with OMHA for a decision, dismissal order, or remand.

(f) *Requesting escalation.*—(1) *When and how to request escalation.* An appellant who files a timely request for hearing before an ALJ and whose appeal continues to be pending with OMHA at the end of the applicable adjudication period under paragraph (a) or (c) of this section, subject to paragraphs (b) and (d) of this section, may exercise the option of escalating the appeal to the Council by filing a written request with OMHA to escalate the appeal to the Council and sending a copy of the request to escalate to the other parties who were sent a copy of the QIC reconsideration.

(2) *Escalation.* If the request for escalation meets the requirements of paragraph (f)(1) of this section and an ALJ or attorney adjudicator is not able to issue a decision, dismissal order, or remand order within the later of 5 calendar days of receiving the request for escalation, or 5 calendar days from the end of the applicable adjudication period set forth in paragraph (a) or (c) of this section, subject to paragraphs (b) and (d) of this section, OMHA will take the following actions—

(i) Send a notice to the appellant stating that an ALJ or attorney adjudicator is not able to issue a decision, dismissal order, or remand order within the adjudication period set forth in paragraph (a) or (c) of this section, the QIC reconsideration will be the decision that is subject to Council review consistent with §405.1102(a), and the appeal will be escalated to the Council for a review in accordance with §405.1108; and

(ii) Forward the case file to the Council.

§ 405.1018

(3) *Invalid escalation request.* If an ALJ or attorney adjudicator determines the request for escalation does not meet the requirements of paragraph (f)(1) of this section, OMHA will send a notice to the appellant explaining why the request is invalid within 5 calendar days of receiving the request for escalation.

[82 FR 5113, Jan. 17, 2017]

§ 405.1018 Submitting evidence.

(a) *When evidence may be submitted.* Except as provided in this section, parties must submit all written or other evidence they wish to have considered with the request for hearing, by the date specified in the request for hearing in accordance with § 405.1014(a)(2), or if a hearing is scheduled, within 10 calendar days of receiving the notice of hearing.

(b) *Effect on adjudication period.* If a party submits written or other evidence later than 10 calendar days after receiving the notice of hearing, any applicable adjudication period specified in § 405.1016 is extended by the number of calendar days in the period between 10 calendar days after receipt of the notice of hearing and the day the evidence is received.

(c) *New evidence.* (1) Any evidence submitted by a provider, supplier, or beneficiary represented by a provider or supplier that is not submitted prior to the issuance of the QIC's reconsideration determination must be accompanied by a statement explaining why the evidence was not previously submitted to the QIC, or a prior decision-maker (see § 405.1028).

(2) If a statement explaining why the evidence was not previously submitted to the QIC or a prior decision-maker is not included with the evidence, the evidence will not be considered.

(d) *When this section does not apply.* (1) The requirements in paragraphs (a) and (b) of this section do not apply to oral testimony given at a hearing, or to evidence submitted by an unrepresented beneficiary.

(2) The requirements in paragraph (c) of this section do not apply to oral testimony given at a hearing, or to evidence submitted by an unrepresented beneficiary, CMS or any of its contractors, a Medicaid State agency, an ap-

42 CFR Ch. IV (10–1–24 Edition)

plicable plan, or a beneficiary represented by someone other than a provider or supplier.

[82 FR 5113, Jan. 17, 2017]

§ 405.1020 Time and place for a hearing before an ALJ.

(a) *General.* The ALJ sets the time and place for the hearing, and may change the time and place, if necessary.

(b) *Determining how appearances are made—*(1) *Appearances by unrepresented beneficiaries.* The ALJ will direct that the appearance of an unrepresented beneficiary who filed a request for hearing be conducted by video-teleconferencing (VTC) if the ALJ finds that VTC technology is available to conduct the appearance, unless the ALJ find good cause for an in-person appearance.

(i) The ALJ may also offer to conduct a hearing by telephone if the request for hearing or administrative record suggests that a telephone hearing may be more convenient for the unrepresented beneficiary.

(ii) The ALJ, with the concurrence of the Chief ALJ or designee, may find good cause that an in-person hearing should be conducted if—

(A) VTC or telephone technology is not available; or

(B) Special or extraordinary circumstances exist.

(2) *Appearances by individuals other than unrepresented beneficiaries.* The ALJ will direct that the appearance of an individual, other than an unrepresented beneficiary who filed a request for hearing, be conducted by telephone, unless the ALJ finds good cause for an appearance by other means.

(i) The ALJ may find good cause for an appearance by VTC if he or she determines that VTC is necessary to examine the facts or issues involved in the appeal.

(ii) The ALJ, with the concurrence of the Chief ALJ or designee, also may find good cause that an in-person hearing should be conducted if—

(A) VTC and telephone technology are not available; or

(B) Special or extraordinary circumstances exist.

(c) *Notice of hearing.* (1) A notice of hearing is sent to all parties that filed