

considers the party's objections and decides whether to proceed with the appeal or withdraw.

(c) If the ALJ or attorney adjudicator withdraws, another ALJ or attorney adjudicator will be assigned to adjudicate the appeal. If the ALJ or attorney adjudicator does not withdraw, the party may, after the ALJ or attorney adjudicator has issued an action in the case, present his or her objections to the Council in accordance with § 405.1100 through § 405.1130. The Council will then consider whether the decision or dismissal should be revised or if applicable, a new hearing held before another ALJ. If the case is escalated to the Council after a hearing is held but before the ALJ issues a decision, the Council considers the reasons the party objected to the ALJ during its review of the case and, if the Council deems it necessary, may remand the case to another ALJ for a hearing and decision.

(d) If the party objects to the ALJ or attorney adjudicator and the ALJ or attorney adjudicator subsequently withdraws from the appeal, any adjudication time frame that applies to the appeal in accordance with § 405.1016 is extended by 14 calendar days.

[82 FR 5115, Jan. 17, 2017]

**§ 405.1028 Review of evidence submitted by parties.**

(a) *New evidence*—(1) *Examination of any new evidence.* After a hearing is requested but before a hearing is held by an ALJ or a decision is issued if no hearing is held, the ALJ or attorney adjudicator will examine any new evidence submitted in accordance with § 405.1018, by a provider, supplier, or beneficiary represented by a provider or supplier to determine whether the provider, supplier, or beneficiary represented by a provider or supplier had good cause for submitting the evidence for the first time at the OMHA level.

(2) *Determining if good cause exists.* An ALJ or attorney adjudicator finds good cause when—

(i) The new evidence is, in the opinion of the ALJ or attorney adjudicator, material to an issue addressed in the QIC's reconsideration and that issue was not identified as a material issue prior to the QIC's reconsideration;

(ii) The new evidence is, in the opinion of the ALJ, material to a new issue identified in accordance with § 405.1032(b)(1);

(iii) The party was unable to obtain the evidence before the QIC issued its reconsideration and submits evidence that, in the opinion of the ALJ or attorney adjudicator, demonstrates the party made reasonable attempts to obtain the evidence before the QIC issued its reconsideration;

(iv) The party asserts that the evidence was submitted to the QIC or another contractor and submits evidence that, in the opinion of the ALJ or attorney adjudicator, demonstrates the new evidence was submitted to the QIC or another contractor before the QIC issued the reconsideration; or

(v) In circumstances not addressed in paragraphs (a)(2)(i) through (iv) of this section, the ALJ or attorney adjudicator determines that the party has demonstrated that it could not have obtained the evidence before the QIC issued its reconsideration.

(3) *If good cause does not exist.* If the ALJ or attorney adjudicator determines that there was not good cause for submitting the evidence for the first time at the OMHA level, the ALJ or attorney adjudicator must exclude the evidence from the proceeding and may not consider it in reaching a decision.

(4) *Notification to parties.* If a hearing is conducted, as soon as possible, but no later than the start of the hearing, the ALJ must notify all parties and participants who responded to the notice of hearing whether the evidence will be considered or is excluded from consideration.

(b) *Duplicative evidence.* The ALJ or attorney adjudicator may exclude from consideration any evidence submitted by a party at the OMHA level that is duplicative of evidence already in the record forwarded to OMHA.

[82 FR 5115, Jan. 17, 2017]

**§ 405.1030 ALJ hearing procedures.**

(a) *General rule.* A hearing is open to the parties and to other persons the ALJ considers necessary and proper.

(b) *At the hearing.* (1) At the hearing, the ALJ fully examines the issues,