

the hearing are the same issues that are involved in one or more other appeals pending before the same ALJ.

(2) It is within the discretion of the ALJ to grant or deny an appellant's request for consolidation. In considering an appellant's request, the ALJ may consider factors such as whether the claims at issue may be more efficiently decided if the appeals are consolidated for hearing. In considering the appellant's request for consolidation, the ALJ must take into account any adjudication deadlines for each appeal and may require an appellant to waive the adjudication deadline associated with one or more appeals if consolidation otherwise prevents the ALJ from deciding all of the appeals at issue within their respective deadlines.

(3) The ALJ may also propose on his or her own motion to consolidate two or more appeals in one hearing for administrative efficiency, but may not require an appellant to waive the adjudication deadline for any of the consolidated cases.

(4) Notice of a consolidated hearing must be included in the notice of hearing issued in accordance with §§ 405.1020 and 405.1022.

(b) *Consolidated or separate decision and record.* (1) If the ALJ decides to hold a consolidated hearing, he or she may make either—

(i) A consolidated decision and record; or

(ii) A separate decision and record on each appeal.

(2) If a separate decision and record on each appeal is made, the ALJ is responsible for making sure that any evidence that is common to all appeals and material to the common issue to be decided, and audio recordings of any conferences that were conducted and the consolidated hearing are included in each individual administrative record, as applicable.

(3) If a hearing will not be conducted for multiple appeals that are before the same ALJ or attorney adjudicator, and the appeals involve one or more of the same issues, the ALJ or attorney adjudicator may make a consolidated decision and record at the request of the appellant or on the ALJ's or attorney adjudicator's own motion.

(c) *Limitation on consolidated proceedings.* Consolidated proceedings may only be conducted for appeals filed by the same appellant, unless multiple appellants aggregated claims to meet the amount in controversy requirement in accordance with § 405.1006 and the beneficiaries whose claims are at issue have all authorized disclosure of their protected information to the other parties and any participants.

[82 FR 5118, Jan. 17, 2017]

§ 405.1046 Notice of an ALJ or attorney adjudicator decision.

(a) *Decisions on requests for hearing—*

(1) *General rule.* Unless the ALJ or attorney adjudicator dismisses or remands the request for hearing, the ALJ or attorney adjudicator will issue a written decision that gives the findings of fact, conclusions of law, and the reasons for the decision. The decision must be based on evidence offered at the hearing or otherwise admitted into the record, and shall include independent findings and conclusions. OMHA mails or otherwise transmits a copy of the decision to all the parties at their last known address and the QIC that issued the reconsideration or from which the appeal was escalated. For overpayment cases involving multiple beneficiaries, where there is no beneficiary liability, the ALJ or attorney adjudicator may choose to send written notice only to the appellant. In the event a payment will be made to a provider or supplier in conjunction with the ALJ's or attorney adjudicator's decision, the contractor must also issue a revised electronic or paper remittance advice to that provider or supplier.

(2) *Content of the notice.* The decision must be written in a manner calculated to be understood by a beneficiary and must include—

(i) The specific reasons for the determination, including, to the extent appropriate, a summary of any clinical or scientific evidence used in making the determination;

(ii) For any new evidence that was submitted for the first time at the OMHA level and subject to a good cause determination pursuant to

§ 405.1028, a discussion of the new evidence and the good cause determination that was made;

(iii) The procedures for obtaining additional information concerning the decision; and

(iv) Notification of the right to appeal the decision to the Council, including instructions on how to initiate an appeal under this section.

(3) *Limitation on decision.* When the amount of payment for an item or service is an issue before the ALJ or attorney adjudicator, the ALJ or attorney adjudicator may make a finding as to the amount of payment due. If the ALJ or attorney adjudicator makes a finding concerning payment when the amount of payment was not an issue before the ALJ or attorney adjudicator, the contractor may independently determine the payment amount. In either of the aforementioned situations, an ALJ's or attorney adjudicator's decision is not binding on the contractor for purposes of determining the amount of payment due. The amount of payment determined by the contractor in effectuating the ALJ's or attorney adjudicator's decision is a new initial determination under § 405.924.

(b) *Decisions on requests for review of a QIC dismissal*—(1) *General rule.* Unless the ALJ or attorney adjudicator dismisses the request for review of a QIC dismissal, or the QIC's dismissal is vacated and remanded, the ALJ or attorney adjudicator will issue a written decision affirming the QIC's dismissal. OMHA mails or otherwise transmits a copy of the decision to all the parties that received a copy of the QIC's dismissal.

(2) *Content of the notice.* The decision must be written in a manner calculated to be understood by a beneficiary and must include—

(i) The specific reasons for the determination, including a summary of the evidence considered and applicable authorities;

(ii) The procedures for obtaining additional information concerning the decision; and

(iii) Notification that the decision is binding and is not subject to further review, unless reopened and revised by the ALJ or attorney adjudicator.

(c) *Recommended decision.* An ALJ or attorney adjudicator issues a recommended decision if he or she is directed to do so in the Council's remand order. An ALJ or attorney adjudicator may not issue a recommended decision on his or her own motion. The ALJ or attorney adjudicator mails a copy of the recommended decision to all the parties at their last known address.

[82 FR 5119, Jan. 17, 2017, as amended at 84 FR 19871, May 7, 2019]

§ 405.1048 The effect of an ALJ's or attorney adjudicator's decision.

(a) The decision of the ALJ or attorney adjudicator on a request for hearing is binding on all parties unless—

(1) A party requests a review of the decision by the Council within the stated time period or the Council reviews the decision issued by an ALJ or attorney adjudicator under the procedures set forth in § 405.1110, and the Council issues a final decision or remand order or the appeal is escalated to Federal district court under the provisions at § 405.1132 and the Federal district court issues a decision.

(2) The decision is reopened and revised by an ALJ or attorney adjudicator or the Council under the procedures explained in § 405.980;

(3) The expedited access to judicial review process at § 405.990 is used;

(4) The ALJ's or attorney adjudicator's decision is a recommended decision directed to the Council and the Council issues a decision; or

(5) In a case remanded by a Federal district court, the Council assumes jurisdiction under the procedures in § 405.1138 and the Council issues a decision.

(b) The decision of the ALJ or attorney adjudicator on a request for review of a QIC dismissal is binding on all parties unless the decision is reopened and revised by the ALJ or attorney adjudicator under the procedures in § 405.980.

[82 FR 5119, Jan. 17, 2017]

§ 405.1050 Removal of a hearing request from OMHA to the Council.

If a request for hearing is pending before OMHA, the Council may assume responsibility for holding a hearing by