

of a QIC dismissal under any of the following conditions:

(1) The person or entity requesting a review of a dismissal has no right to it under § 405.1004.

(2) The party did not request a review within the stated time period and the ALJ or attorney adjudicator has not found good cause for extending the deadline, as provided in § 405.1014(e).

(3) The beneficiary whose claim is being appealed died while the request for review is pending and all of the following criteria apply:

(i) The request for review was filed by the beneficiary or the beneficiary's representative, and the beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the ALJ or attorney adjudicator considers if the surviving spouse or estate remains liable for the services that were denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation on liability provisions based on the denial of the services at issue.

(ii) No other individuals or entities that have a financial interest in the case wish to pursue an appeal under § 405.1004.

(iii) No other individual or entity filed a valid and timely request for a review of the QIC dismissal in accordance to § 405.1014.

(4) The appellant's request is not complete in accordance with § 405.1014(a)(1) or the appellant, other than an unrepresented beneficiary, did not send a copy of its request to the other parties in accordance with § 405.1014(d), after the appellant is provided with an opportunity to complete the request and/or send a copy of the request to the other parties.

(c) *Withdrawal of request.* At any time before notice of the decision, dismissal, or remand is mailed, if only one party requested the hearing or review of the QIC dismissal and that party asks to withdraw the request, an ALJ or attorney adjudicator may dismiss the request for hearing or request for review of a QIC dismissal. This request for withdrawal may be submitted in writing, or a request to withdraw a request for hearing may be made orally at a hearing before the ALJ. The request

for withdrawal must include a clear statement that the appellant is withdrawing the request for hearing or review of the QIC dismissal and does not intend to further proceed with the appeal. If an attorney or other legal professional on behalf of a beneficiary or other appellant files the request for withdrawal, the ALJ or attorney adjudicator may presume that the representative has advised the appellant of the consequences of the withdrawal and dismissal.

(d) *Notice of dismissal.* OMHA mails or otherwise transmits a written notice of the dismissal of the hearing or review request to the appellant, all parties who were sent a copy of the request for hearing or review at their last known address, and to CMS or a CMS contractor that is a party to the proceedings on a request for hearing. The notice states that there is a right to request that the ALJ or attorney adjudicator vacate the dismissal action. The appeal will proceed with respect to any other parties who filed a valid request for hearing or review regarding the same claim or disputed matter.

(e) *Vacating a dismissal.* If good and sufficient cause is established, the ALJ or attorney adjudicator may vacate his or her dismissal of a request for hearing or review within 180 calendar days of the date of the notice of dismissal.

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

§ 405.1054 Effect of dismissal of a request for a hearing or request for review of QIC dismissal.

(a) The dismissal of a request for a hearing is binding, unless it is vacated by the Council under § 405.1108(b), or vacated by the ALJ or attorney adjudicator under § 405.1052(e).

(b) The dismissal of a request for review of a QIC dismissal of a request for reconsideration is binding and not subject to further review unless it is vacated by the ALJ or attorney adjudicator under § 405.1052(e).

[82 FR 5120, Jan. 17, 2017]

§ 405.1056 Remands of requests for hearing and requests for review.

(a) *Missing appeal determination or case record.* (1) If an ALJ or attorney adjudicator requests an official copy of

a missing redetermination or reconsideration for an appealed claim in accordance with § 405.1034, and the QIC or another contractor does not furnish the copy within the time frame specified in § 405.1034, the ALJ or attorney adjudicator may issue a remand directing the QIC or other contractor to reconstruct the record or, if it is not able to do so, initiate a new appeal adjudication.

(2) If the QIC does not furnish the case file for an appealed reconsideration, an ALJ or attorney adjudicator may issue a remand directing the QIC to reconstruct the record or, if it is not able to do so, initiate a new appeal adjudication.

(3) If the QIC or another contractor is able to reconstruct the record for a remanded case and returns the case to OMHA, the case is no longer remanded and the reconsideration is no longer vacated, and any adjudication period that applies to the appeal in accordance with § 405.1016 is extended by the period between the date of the remand and the date that case is returned to OMHA.

(b) *No redetermination.* If an ALJ or attorney adjudicator finds that the QIC issued a reconsideration that addressed coverage or payment issues related to the appealed claim and no redetermination of the claim was made (if a redetermination was required under this subpart) or the request for redetermination was dismissed, the reconsideration will be remanded to the QIC, or its successor to re-adjudicate the request for reconsideration.

(c) *Requested remand—(1) Request contents and timing.* At any time prior to an ALJ or attorney adjudicator issuing a decision or dismissal, the appellant and CMS or one of its contractors may jointly request a remand of the appeal to the entity that conducted the reconsideration. The request must include the reasons why the appeal should be remanded and indicate whether remanding the case will likely resolve the matter in dispute.

(2) *Granting the request.* An ALJ or attorney adjudicator may grant the request and issue a remand if he or she determines that remanding the case will likely resolve the matter in dispute.

(d) *Remanding a QIC's dismissal of a request for reconsideration.* (1) Consistent with § 405.1004(b), an ALJ or attorney adjudicator will remand a case to the appropriate QIC if the ALJ or attorney adjudicator determines that a QIC's dismissal of a request for reconsideration was in error.

(2) If an official copy of the notice of dismissal or case file cannot be obtained from the QIC, an ALJ or attorney adjudicator may also remand a request for review of a dismissal in accordance with the procedures in paragraph (a) of this section.

(e) *Relationship to local and national coverage determination appeals process.*

(1) An ALJ or attorney adjudicator remands an appeal to the QIC that made the reconsideration if the appellant is entitled to relief pursuant to § 426.460(b)(1), § 426.488(b), or § 426.560(b)(1) of this chapter.

(2) Unless the appellant is entitled to relief pursuant to § 426.460(b)(1), § 426.488(b), or § 426.560(b)(1) of this chapter, the ALJ or attorney adjudicator applies the LCD or NCD in place on the date the item or service was provided.

(f) *Notice of remand.* OMHA mails or otherwise transmits a written notice of the remand of the request for hearing or request for review to the appellant, all of the parties who were sent a copy of the request at their last known address, and CMS or a contractor that elected to be a participant in the proceedings or party to the hearing. The notice states that there is a right to request that the Chief ALJ or a designee review the remand, unless the remand was issued under paragraph (d)(1) of this section.

(g) *Review of remand.* Upon a request by a party or CMS or one of its contractors filed within 30 calendar days of receiving a notice of remand, the Chief ALJ or designee will review the remand, and if the remand is not authorized by this section, vacate the remand order. The determination on a request to review a remand order is binding and not subject to further review. The review of remand procedures provided for in this paragraph are not

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available for and do not apply to remands that are issued under paragraph (d)(1) of this section.

[82 FR 5121, Jan. 17, 2017, as amended at 84 FR 19871, May 7, 2019]

§ 405.1058 Effect of a remand.

A remand of a request for hearing or request for review is binding unless vacated by the Chief ALJ or a designee in accordance with § 405.1056(g).

[82 FR 5121, Jan. 17, 2017]

APPLICABILITY OF MEDICARE COVERAGE POLICIES

§ 405.1060 Applicability of national coverage determinations (NCDs).

(a) *General rule.* (1) An NCD is a determination by the Secretary of whether a particular item or service is covered nationally under Medicare.

(2) An NCD does not include a determination of what code, if any, is assigned to a particular item or service covered under Medicare or a determination of the amount of payment made for a particular item or service.

(3) NCDs are made under section 1862(a)(1) of the Act as well as under other applicable provisions of the Act.

(4) An NCD is binding on fiscal intermediaries, carriers, QIOs, QICs, ALJs and attorney adjudicators, and the Council.

(b) *Review by an ALJ or attorney adjudicator.* (1) An ALJ or attorney adjudicator may not disregard, set aside, or otherwise review an NCD.

(2) An ALJ or attorney adjudicator may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether the NCD was applied correctly to the claim.

(c) *Review by the Council.* (1) The Council may not disregard, set aside, or otherwise review an NCD for purposes of a section 1869 claim appeal, except that the DAB may review NCDs as provided under part 426 of this title.

(2) The Council may review the facts of a particular case to determine whether an NCD applies to a specific claim for benefits and, if so, whether

the NCD was applied correctly to the claim.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37704, June 30, 2005; 82 FR 5121, Jan. 17, 2017]

§ 405.1062 Applicability of local coverage determinations and other policies not binding on the ALJ or attorney adjudicator and Council.

(a) ALJs and attorney adjudicators and the Council are not bound by LCDs, LMRPs, or CMS program guidance, such as program memoranda and manual instructions, but will give substantial deference to these policies if they are applicable to a particular case.

(b) If an ALJ or attorney adjudicator or Council declines to follow a policy in a particular case, the ALJ or attorney adjudicator or Council decision must explain the reasons why the policy was not followed. An ALJ or attorney adjudicator or Council decision to disregard such policy applies only to the specific claim being considered and does not have precedential effect.

(c) An ALJ or attorney adjudicator or the Council may not set aside or review the validity of an LMRP or LCD for purposes of a claim appeal. An ALJ or the DAB may review or set aside an LCD (or any part of an LMRP that constitutes an LCD) in accordance with part 426 of this title.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5121, Jan. 17, 2017]

§ 405.1063 Applicability of laws, regulations, CMS Rulings, and precedential decisions.

(a) All laws and regulations pertaining to the Medicare and Medicaid programs, including, but not limited to Titles XI, XVIII, and XIX of the Social Security Act and applicable implementing regulations, are binding on ALJs and attorney adjudicators, and the Council.

(b) CMS Rulings are published under the authority of the Administrator, CMS. Consistent with § 401.108 of this chapter, rulings are binding on all CMS components, on all HHS components that adjudicate matters under the jurisdiction of CMS, and on the Social Security Administration to the extent that components of the Social Security