

## § 405.1100

Administration adjudicate matters under the jurisdiction of CMS.

(c) Precedential decisions designated by the Chair of the Departmental Appeals Board in accordance with § 401.109 of this chapter, are binding on all CMS components, 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 Administration adjudicate matters under the jurisdiction of CMS.

[82 FR 5121, Jan. 17, 2017]

### MEDICARE APPEALS COUNCIL REVIEW

#### § 405.1100 Medicare Appeals Council review: General.

(a) The appellant or any other party to an ALJ's or attorney adjudicator's decision or dismissal may request that the Council review the ALJ's or attorney adjudicator's decision or dismissal.

(b) Under circumstances set forth in §§ 405.1016 and 405.1108, the appellant may request that a case be escalated to the Council for a decision even if the ALJ or attorney adjudicator has not issued a decision, dismissal, or remand in his or her case.

(c) When the Council reviews an ALJ's or attorney adjudicator's decision, it undertakes a *de novo* review. The Council issues a final decision or dismissal order or remands a case to the ALJ or attorney adjudicator within 90 calendar days of receipt of the appellant's request for review, unless the 90 calendar day period is extended as provided in this subpart.

(d) When deciding an appeal that was escalated from the OMHA level to the Council, the Council will issue a final decision or dismissal order or remand the case to the OMHA Chief ALJ within 180 calendar days of receipt of the appellant's request for escalation, unless the 180 calendar day period is extended as provided in this subpart.

[82 FR 5122, Jan. 17, 2017]

#### § 405.1102 Request for Council review when ALJ or attorney adjudicator issues decision or dismissal.

(a)(1) A party to a decision or dismissal issued by an ALJ or attorney adjudicator may request a Council review if the party files a written request

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for a Council review within 60 calendar days after receipt of the ALJ's or attorney adjudicator's decision or dismissal.

(2) For purposes of this section, the date of receipt of the ALJ's or attorney adjudicator's decision or dismissal is presumed to be 5 calendar days after the date of the notice of the decision or dismissal, unless there is evidence to the contrary.

(3) The request is considered as filed on the date it is received by the entity specified in the notice of the ALJ's or attorney adjudicator's action.

(b) A party requesting a review may ask that the time for filing a request for Council review be extended if—

(1) The request for an extension of time is in writing;

(2) It is filed with the Council; and

(3) It explains why the request for review was not filed within the stated time period. If the Council finds that there is good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, the Council uses the standards outlined at § 405.942(b)(2) and (3).

(c) A party does not have the right to seek Council review of an ALJ's or attorney adjudicator's remand to a QIC, affirmation of a QIC's dismissal of a request for reconsideration, or dismissal of a request for review of a QIC dismissal.

(d) For purposes of requesting Council review (§§ 405.1100 through 405.1140), unless specifically excepted, the term "party", includes CMS where CMS has entered into a case as a party according to § 405.1012. The term, "appellant," does not include CMS, where CMS has entered into a case as a party according to § 405.1012.

[82 FR 5122, Jan. 17, 2017]

#### § 405.1106 Where a request for review or escalation may be filed.

(a) When a request for a Council review is filed after an ALJ or attorney adjudicator has issued a decision or dismissal, the request for review must be filed with the entity specified in the notice of the ALJ's or attorney adjudicator's action. The appellant must also send a copy of the request for review to the other parties to the ALJ or