

§ 405.1112 Content of request for review.

(a) The request for Council review must be filed with the entity specified in the notice of the ALJ's or attorney adjudicator's action. The request for review must be in writing and may be made on a standard form. A written request that is not made on a standard form is accepted if it contains the beneficiary's name; Medicare number; the specific service(s) or item(s) for which the review is requested; the specific date(s) of service; the date of the ALJ's or attorney adjudicator's decision or dismissal order, if any; and the name of the party or the representative of the party; and any other information CMS may decide.

(b) The request for review must identify the parts of the ALJ's or attorney adjudicator's action with which the party requesting review disagrees and explain why he or she disagrees with the ALJ's or attorney adjudicator's decision, dismissal, or other determination being appealed. For example, if the party requesting review believes that the ALJ's or attorney adjudicator's action is inconsistent with a statute, regulation, CMS Ruling, or other authority, the request for review should explain why the appellant believes the action is inconsistent with that authority.

(c) The Council will limit its review of an ALJ's or attorney adjudicator's actions to those exceptions raised by the party in the request for review, unless the appellant is an unrepresented beneficiary. For purposes of this section only, we define a representative as anyone who has accepted an appointment as the beneficiary's representative, except a member of the beneficiary's family, a legal guardian, or an individual who routinely acts on behalf of the beneficiary, such as a family member or friend who has a power of attorney.

[82 FR 5123, Jan. 17, 2017, as amended at 84 FR 19871, May 7, 2019]

§ 405.1114 Dismissal of request for review.

The Council dismisses a request for review if the party requesting review did not file the request within the stated period of time and the time for fil-

ing has not been extended. The Council also dismisses the request for review if—

(a) The party asks to withdraw the request for review;

(b) The party does not have a right to request Council review; or

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

(1) 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 Council considers whether 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;

(2) No other individual or entity with a financial interest in the case wishes to pursue an appeal under § 405.1102;

(3) No other party to the ALJ's or attorney adjudicator's action filed a valid and timely review request under §§ 405.1102 and 405.1112.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5123, Jan. 17, 2017; 84 FR 19871, May 7, 2019]

§ 405.1116 Effect of dismissal of request for Council review or request for hearing.

The dismissal of a request for Council review or denial of a request for review of a dismissal issued by an ALJ or attorney adjudicator is binding and not subject to further review unless reopened and vacated by the Council. The Council's dismissal of a request for hearing is also binding and not subject to judicial review.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5123, Jan. 17, 2017]

§ 405.1118 Obtaining evidence from the Council.

A party may request and receive a copy of all or part of the record of the ALJ's or attorney adjudicator's action, including any index of the administrative record, documentary evidence, and a copy of the audio recording of the oral proceedings. However, the party