

the appellant does not request escalation to Federal district court, the case remains with the Council until a final decision, dismissal order, or remand order is issued.

(b) *Court in which to file civil action.*

(1) Any civil action described in paragraph (a) of this section must be filed in the district court of the United States for the judicial district in which the party resides or where such individual, institution, or agency has its principal place of business.

(2) If the party does not reside within any judicial district, or if the individual, institution, or agency does not have its principal place of business within any such judicial district, the civil action must be filed in the District Court of the United States for the District of Columbia.

(c) *Time for filing civil action.* (1) Any civil action described in paragraph (a) of this section must be filed within the time periods specified in § 405.1130, § 405.1132, or § 405.1134, as applicable.

(2) For purposes of this section, the date of receipt of the notice of the Council's decision or the Council's notice that it is not able to issue a decision within the statutory timeframe shall be presumed to be 5 calendar days after the date of the notice, unless there is a reasonable showing to the contrary.

(3) Where a case is certified for judicial review in accordance with the expedited access to judicial review process in § 405.990, the civil action must be filed within 60 calendar days after receipt of the review entity's certification, except where the time is extended by the ALJ or attorney adjudicator or Council, as applicable, upon a showing of good cause.

(d) *Proper defendant.* (1) In any civil action described in paragraph (a) of this section, the Secretary of HHS, in his or her official capacity, is the proper defendant. Any civil action properly filed shall survive notwithstanding any change of the person holding the Office of the Secretary of HHS or any vacancy in such office.

(2) If the complaint is erroneously filed against the United States or against any agency, officer, or employee of the United States other than the Secretary, the plaintiff will be no-

tified that he or she has named an incorrect defendant and is granted 60 calendar days from the date of receipt of the notice in which to commence the action against the correct defendant, the Secretary.

(e) *Prohibition against judicial review of certain Part B regulations or instructions.* Under section 1869(e)(1) of the Act, a court may not review a regulation or instruction that relates to a method of payment under Medicare Part B if the regulation was published, or the instructions issued, before January 1, 1991.

(f) *Standard of review.* (1) Under section 205(g) of the Act, the findings of the Secretary of HHS as to any fact, if supported by substantial evidence, are conclusive.

(2) When the Secretary's decision is adverse to a party due to a party's failure to submit proof in conformity with a regulation prescribed under section 205(a) of the Act pertaining to the type of proof a party must offer to establish entitlement to payment, the court will review only whether the proof conforms with the regulation and the validity of the regulation.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37705, June 30, 2005; 74 FR 65338, Dec. 9, 2009; 82 FR 5124, Jan. 17, 2017]

**§ 405.1138 Case remanded by a Federal district court.**

When a Federal district court remands a case to the Secretary for further consideration, unless the court order specifies otherwise, the Council, acting on behalf of the Secretary, may make a decision, or it may remand the case to an ALJ or attorney adjudicator with instructions to take action and either issue a decision, take other action, or return the case to the Council with a recommended decision. If the Council remands a case, the procedures specified in § 405.1140 will be followed.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5124, Jan. 17, 2017]

**§ 405.1140 Council review of ALJ decision in a case remanded by a Federal district court.**

(a) *General rules.* (1) In accordance with § 405.1138, when a case is remanded by a Federal district court for further consideration and the Council remands