

(2) A decision granting an extension request under this section is not subject to immediate review by a CMS reviewing official (as described in § 405.1834(b)(3) of this subpart). Any decision may be examined during the course of CMS review of a final jurisdictional dismissal decision or a final hearing decision by the contractor hearing officer(s) (as described in §§ 405.1834(b)(2)(i) and 405.1834(b)(2)(ii) of this subpart).

[73 FR 30245, May 23, 2008, as amended at 80 FR 70598, Nov. 13, 2015; 85 FR 59019, Sept. 18, 2020]

§ 405.1814 Contractor hearing officer jurisdiction.

(a) *General rules.* (1) After a request for a contractor hearing is filed under § 405.1811 of this subpart, the contractor hearing officer(s) must do the following:

(i) Determine in accordance with paragraph (b) of this section whether or not it has jurisdiction to grant a hearing on each of the specific matters at issue in the hearing request.

(ii) Make a preliminary determination of the scope of its jurisdiction (that is, whether the request for hearing was timely, and whether the amount in controversy requirement has been met), if any, over the matters at issue in the appeal before conducting any of the following proceedings:

(A) Determining its authority to decide a legal question relevant to a matter at issue (as described in § 405.1829 of this subpart);

(B) Permitting discovery (as specified in § 405.1821 of this subpart); or

(C) Conducting a hearing (as specified in § 405.1819 of this subpart);

(2) The hearing officer(s) may revise a preliminary jurisdictional determination at any subsequent stage of the proceedings in an appeal, and it must promptly notify the parties of any revised determination.

(3) Under paragraph (c)(1) of this section, each contractor hearing decision (as described in § 405.1831 of this subpart) must include a final jurisdictional finding for each specific matter at issue in the appeal.

(4) If the hearing officer(s) finally determines it lacks jurisdiction over

every specific matter at issue in the appeal, it issues a jurisdictional dismissal decision under paragraph (c)(2) of this section.

(5) Final jurisdictional findings and jurisdictional dismissal decisions by the hearing officer(s) are subject to the CMS reviewing official procedure in accordance with paragraph (d) of this section and § 405.1834(b)(2)(i) and (b)(2)(ii) of this subpart.

(b) *Criteria.* Except for the amount in controversy requirement, the jurisdiction of the contractor hearing officer(s) to grant a hearing is determined separately for each specific matter at issue in the contractor or Secretary determination for the cost reporting period under appeal. The hearing officer(s) has jurisdiction to grant a hearing over a specific matter at issue in an appeal only if the provider has a right to a contractor hearing under § 405.1811. Certain matters at issue are removed from the jurisdiction of the contractor hearing officer(s); these matters include, but are not limited to, the following:

(1) A finding in a contractor determination that expenses incurred for certain items or services furnished by a provider to an individual are not payable under title XVIII of the Act because those items and services are excluded from coverage under section 1862 of the Act and part 411 of the regulations. Review of these findings is limited to the applicable provisions of sections 1155, 1869, and 1879(d) of the Act, and of subpart I of part 405 and subpart B of part 478, as applicable.

(2) Certain matters affecting payments to hospitals under the prospective payment system, as provided in section 1886(d)(7) of the Act and § 405.1804 of this subpart.

(c) *Final jurisdictional findings, and jurisdictional dismissal decisions by contractor hearing officer(s).* (1) In issuing a hearing decision under § 405.1831 of this subpart, the contractor hearing officer(s) must make a final determination of its jurisdiction, or lack thereof, for each specific matter at issue in the hearing decision. Each contractor hearing decision must include specific findings of fact and conclusions of law as

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to the jurisdiction of the hearing officer(s), or lack thereof, to grant a hearing on each matter at issue in the appeal.

(2) If the hearing officer(s) finally determines it lacks jurisdiction to grant a hearing for every specific matter at issue in an appeal, it must issue a jurisdictional dismissal decision. Each jurisdictional dismissal decision by the hearing officer(s) must include specific findings of fact and conclusions of law explaining the determination that there is no jurisdiction to grant a hearing on each matter at issue in the appeal. A copy of the jurisdictional dismissal decision must be sent promptly to each party to the appeal.

(3) A jurisdictional dismissal decision by the contractor hearing officer(s) under paragraph (c)(2) of this section is final and binding on the parties, unless the decision is reviewed by a CMS reviewing official in accordance with § 405.1834 of this subpart or reopened and revised by the contractor hearing officer(s) in accordance with § 405.1885 through § 405.1889 of this subpart.

(d) *CMS reviewing official review.* Any finding by the contractor hearing officer as to whether it has jurisdiction to grant a hearing on a specific matter at issue in an appeal is not subject to further administrative review, except as provided in this paragraph. The contractor hearing officer's jurisdictional findings as to specific matters at issue in an appeal may be reviewed solely during the course of CMS reviewing official review of one of the contractor hearing officer decisions specified in § 405.1834(b)(2) of this subpart.

[73 FR 30245, May 23, 2008, as amended at 80 FR 70598, Nov. 13, 2015; 85 FR 59019, Sept. 18, 2020]

§ 405.1815 Parties to proceedings before the contractor hearing officer(s).

When a provider files a request for a contractor hearing in accordance with § 405.1811 of this subpart, the parties to all proceedings before the contractor hearing officer(s) are the provider and, if applicable, any other entity found by the contractor hearing officer(s) to be a related organization of the provider under the principles enunciated in § 413.17 of this chapter. The parties

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must be given reasonable notice of the time, date, and place of any contractor hearing. Neither the contractor nor CMS may be made a party to proceedings before the contractor hearing officer(s).

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§ 405.1817 Hearing officer or panel of hearing officers authorized to conduct contractor hearing; disqualification of officers.

The contractor hearing provided for in § 405.1809 shall be conducted by a hearing officer or panel of hearing officers designated by the contractor. Such hearing officer or officers shall be persons knowledgeable in the field of health care reimbursement. The hearing officer or officers shall not have had any direct responsibility for the program reimbursement determination with respect to which a request for hearing is filed; no hearing officer (or officers) shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for determination before him. Notice of any objection which a party may have with respect to a hearing officer shall be presented in writing to such officer by the objecting party at the party's earliest opportunity. The hearing officer shall consider the objection and shall, at his discretion, either proceed in the conduct of the hearing or withdraw. If the hearing officer does not withdraw, the objecting party may, after the hearing, present his objections to an executive official of the contractor, who shall rule promptly on the objection.

§ 405.1819 Conduct of contractor hearing.

The hearing shall be open to all parties thereto (see § 405.1815) and to representatives of the contractor and of the Centers for Medicare & Medicaid Services (see § 405.1815). The hearing officer(s) shall inquire fully into all of the matters at issue and shall receive into evidence the testimony and any documents which are relevant and material to such matters. If the hearing officer(s) believes that there is relevant and material evidence available which has not been presented at the hearing,