

§ 405.1823 Evidence at contractor hearing.

Evidence may be received at the contractor hearing even though inadmissible under the rules of evidence applicable to court procedure. The hearing officer(s) shall give the parties opportunity for submission and consideration of facts and arguments, and during the course of the hearing, should in ruling upon admissibility of evidence, exclude irrelevant, immaterial, or unduly repetitious evidence. The hearing officer(s) shall render a final ruling on the admissibility of evidence.

§ 405.1825 Witnesses at contractor hearing.

The hearing officer(s) may examine the witnesses and shall allow the parties and their representatives to do so. Parties to the proceedings may also cross-examine witnesses.

§ 405.1827 Record of proceedings before the contractor hearing officer(s).

(a) The contractor hearing officer(s) must maintain a complete record of all proceedings in an appeal.

(b) The record consists of all documents and any other tangible materials timely submitted to the hearing officer(s) by the parties to the appeal and by any nonparty (as described in § 405.1821(c) of this subpart), along with all correspondence, rulings, orders, and decisions (including the final decision) issued by the hearing officer(s).

(c) The record must include a complete transcription of the proceedings at any contractor hearing.

(d) A copy of the transcription must be made available to any party upon request.

[73 FR 30247, May 23, 2008]

§ 405.1829 Scope of authority of contractor hearing officer(s).

(a) The hearing officer(s) in exercising his authority must comply with all the provisions of title XVIII of the Act and regulations issued thereunder, as well as with CMS Rulings issued under the authority of the Administrator of the Centers for Medicare & Medicaid Services (as described in § 401.108 of this chapter), and with the general instructions issued by the Cen-

ters for Medicare & Medicaid Services in accordance with the Secretary's agreement with the contractor.

(b)(1) If the contractor hearing officer(s) has jurisdiction to conduct a hearing on the specific matters at issue under § 405.1811, and the legal authority to fully resolve the matters in a hearing decision (as described in § 405.1831 of this subpart), the hearing officer(s) must affirm, modify, or reverse the contractor's findings on each specific matter at issue in the contractor or Secretary determination for the cost year under appeal.

(2) The contractor hearing officer(s) also may make additional revisions on specific matters regardless of whether the contractor considered the matters in issuing the contractor determination for the cost year, provided the hearing officer(s) does not consider or decide any specific matter for which it lacks jurisdiction (as described in § 405.1814(b) of this subpart) or which was not timely raised in the provider's hearing request.

(3) The authority of the contractor hearing officer(s) under this paragraph to make the additional revisions is limited to those revisions necessary to fully resolve a specific matter at issue if—

(i) The hearing officer(s) has jurisdiction to grant a hearing on the specific matter under §§ 405.1811 and 405.1814 of this subpart; and

(ii) The specific matter was timely raised in an initial request for a contractor hearing filed in accordance with § 405.1811(b) of this subpart or in a timely request to add issues to an appeal submitted in accordance with § 405.1811(c) of this subpart.

[39 FR 34515, Sept. 26, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 73 FR 30247, May 23, 2008]

§ 405.1831 Contractor hearing decision.

(a) If the contractor hearing officer(s) finds jurisdiction (as described in § 405.1814(a) of this subpart) and conducts a hearing, the contractor hearing officer(s) must promptly issue a written hearing decision.

(b) The contractor hearing decision must be based on the evidence from the contractor hearing (as described in

§ 405.1823 of this subpart) and other evidence as may be included in the record (as described in § 405.1827 of this subpart).

(c) The decision must include findings of fact and conclusions of law on jurisdictional issues (as described in § 405.1814(c)(1) of this subpart) and on the merits of the provider's reimbursement claims, and include appropriate citations to the record evidence and to the applicable law, regulations, CMS Rulings, and other interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS.

(d) A copy of the decision must be sent promptly to the contractor, to each party and to the appropriate component of CMS (which currently is the Center for Medicare Management).

(e) When the contractor's denial of the relief that the provider seeks before the contractor hearing officer(s) was based on procedural grounds (for example, the alleged failure of the provider to satisfy a time limit), or was based on the alleged failure to supply adequate documentation to support the provider's claim, and the contractor hearing officer(s) rule(s) that the basis of the contractor's denial is invalid, the contractor hearing officer(s) remands to the contractor for the contractor to make a determination on the merits of the provider's claim.

[73 FR 30248, May 23, 2008; 73 FR 49356, Aug. 21, 2008; 85 FR 59019, Sept. 18, 2020]

§ 405.1832 Contractor hearing officer review of compliance with the substantive reimbursement requirement of an appropriate cost report claim.

(a) *General.* In order to receive or potentially qualify for reimbursement for a specific item, the provider must include in its cost report an appropriate claim for the specific item (as prescribed in § 413.24(j) of this chapter). If the provider files an appeal to the contractor seeking reimbursement for a specific item and any party to such appeal questions whether the provider's cost report included an appropriate claim for the specific item, the contractor hearing officer(s) must address such questions in accordance with the procedures set forth in this section.

(b) *Summary of procedures—(1) Preliminary steps.* The contractor hearing officer(s) must give each party to the appeal an adequate opportunity to submit factual evidence and legal argument regarding the question of whether the provider's cost report included an appropriate claim for the specific item under appeal. Upon receipt of timely submitted factual evidence and legal argument (if any), the contractor hearing officer(s) must review such evidence and argument, and prepare written specific findings of fact and conclusions of law on the question of whether the provider's cost report complied with, for the specific item under appeal, the cost report claim requirements prescribed in § 413.24(j) of this chapter. In reaching such specific factual findings and legal conclusions, the contractor hearing officer(s) must follow the procedures set forth in § 413.24(j)(3) of this chapter for determining whether the provider's cost report included an appropriate claim for the specific item under appeal. The contractor hearing officer(s) must promptly give a copy of such written specific factual findings and legal conclusions to each party to the appeal, and such factual findings and legal conclusions must be included in the record of administrative proceedings for the appeal (as prescribed in § 405.1827).

(2) *Limits on contractor hearing officer(s) actions.* The contractor hearing officer(s)'s specific findings of fact and conclusions of law (in accordance with paragraph (b)(1) of this section) must not be invoked or relied on by the contractor hearing officer(s) as a basis to deny, or decline to exercise, jurisdiction over a specific item or take any other of the actions specified in paragraph (c) of this section. Upon giving the parties to the appeal the contractor hearing officer(s)'s written specific factual findings and legal conclusions (pursuant to paragraph (b)(1) of this section) on the question of whether the provider's cost report included an appropriate cost report claim for the specific item under appeal, the contractor hearing officer(s) must proceed to issue one of the two types of overall decisions specified in paragraphs (d) and (e) of this section with respect to the specific item. If the contractor