

Third party payer error does not constitute clerical error. See § 405.986(c).

(4) A party may request that a contractor reopen an initial determination for the purpose of reporting and returning an overpayment under § 401.305 of this chapter.

(d) *Time frame and requirements for reopening reconsiderations, decisions and reviews initiated by a QIC, ALJ or attorney adjudicator, or the Council.* (1) A QIC may reopen its reconsideration on its own motion within 180 calendar days from the date of the reconsideration for good cause in accordance with § 405.986. If the QIC's reconsideration was procured by fraud or similar fault, then the QIC may reopen at any time.

(2) An ALJ or attorney adjudicator may reopen his or her decision, or the Council may reopen an ALJ or attorney adjudicator decision on its own motion within 180 calendar days from the date of the decision for good cause in accordance with § 405.986. If the decision was procured by fraud or similar fault, then the ALJ or attorney adjudicator may reopen his or her decision, or the Council may reopen an ALJ or attorney adjudicator decision, at any time.

(3) The Council may reopen its review decision on its own motion within 180 calendar days from the date of the review decision for good cause in accordance with § 405.986. If the Council's decision was procured by fraud or similar fault, then the Council may reopen at any time.

(e) *Time frames and requirements for reopening reconsiderations, decisions, and reviews requested by a party.* (1) A party to a reconsideration may request that a QIC reopen its reconsideration within 180 calendar days from the date of the reconsideration for good cause in accordance with § 405.986.

(2) A party to an ALJ or attorney adjudicator decision may request that an ALJ or attorney adjudicator reopen his or her decision, or the Council reopen an ALJ or attorney adjudicator decision, within 180 calendar days from the date of the decision for good cause in accordance with § 405.986.

(3) A party to a Council review may request that the Council reopen its decision within 180 calendar days from

the date of the review decision for good cause in accordance with § 405.986.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005; 74 FR 65334, Dec. 9, 2009; 81 FR 7684, Feb. 12, 2016; 82 FR 5108, Jan. 17, 2017]

§ 405.982 Notice of a revised determination or decision.

(a) *When adjudicators initiate reopenings.* When any determination or decision is reopened and revised as provided in § 405.980, the contractor, QIC, ALJ or attorney adjudicator, or the Council must mail its revised determination or decision to the parties to that determination or decision at their last known address. In the case of a full or partial reversal resulting in issuance of a payment to a provider or supplier, a revised electronic or paper remittance advice notice must be issued by the Medicare contractor. An adverse revised determination or decision must state the rationale and basis for the reopening and revision and any right to appeal.

(b) *Reopenings initiated at the request of a party.* The contractor, QIC, ALJ or attorney adjudicator, or the Council must mail its revised determination or decision to the parties to that determination or decision at their last known address. In the case of a full or partial reversal resulting in issuance of a payment to a provider or supplier, a revised electronic or paper remittance advice notice must be issued by the Medicare contractor. An adverse revised determination or decision must state the rationale and basis for the reopening and revision and any right to appeal.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5108, Jan. 17, 2017]

§ 405.984 Effect of a revised determination or decision.

(a) *Initial determinations.* The revision of an initial determination is binding upon all parties unless a party files a written request for a redetermination that is accepted and processed in accordance with § 405.940 through § 405.958.

(b) *Redeterminations.* The revision of a redetermination is binding upon all parties unless a party files a written request for a QIC reconsideration that

is accepted and processed in accordance with § 405.960 through § 405.978.

(c) *Reconsiderations.* The revision of a reconsideration is binding upon all parties unless a party files a written request for an ALJ hearing that is accepted and processed in accordance with § 405.1000 through § 405.1063.

(d) *ALJ or attorney adjudicator decisions.* The revision of an ALJ or attorney adjudicator decision is binding upon all parties unless a party files a written request for a Council review that is accepted and processed in accordance with § 405.1100 through § 405.1130.

(e) *Council review.* The revision of a Council review is binding upon all parties unless a party files a civil action in which a Federal district court accepts jurisdiction and issues a decision.

(f) *Appeal of only the portion of the determination or decision revised by the reopening.* Only the portion of the initial determination, redetermination, reconsideration, or hearing decision revised by the reopening may be subsequently appealed.

(g) *Effect of a revised determination or decision.* A revised determination or decision is binding unless it is appealed or otherwise reopened.

[70 FR 11472, Mar. 8, 2005, as amended at 82 FR 5108, Jan. 17, 2017]

§ 405.986 Good cause for reopening.

(a) *Establishing good cause for reopening.* Good cause may be established when—

(1) There is new and material evidence that—

(i) Was not available or known at the time of the determination or decision; and

(ii) May result in a different conclusion; or

(2) The evidence that was considered in making the determination or decision clearly shows on its face that an obvious error was made at the time of the determination or decision.

(b) *Change in substantive law or interpretative policy.* A change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, or a change in legal interpretation or policy by SSA in a regulation, SSA ruling, or SSA general instruction in entitlement appeals,

whether made in response to judicial precedent or otherwise, is not a basis for reopening a determination or hearing decision under this section. This provision does not preclude contractors from conducting reopenings to effectuate coverage decisions issued under the authority granted by section 1869(f) of the Act.

(c) *Third party payer error.* A request to reopen a claim based upon a third party payer's error in making a primary payment determination when Medicare processed the claim in accordance with the information in its system of records or on the claim form does not constitute good cause for reopening.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37703, June 30, 2005; 86 FR 65660, Nov. 19, 2021]

EXPEDITED ACCESS TO JUDICIAL REVIEW

§ 405.990 Expedited access to judicial review.

(a) *Process for expedited access to judicial review.* (1) For purposes of this section, a “review entity” means an entity of up to three reviewers who are ALJs or members of the Departmental Appeals Board (DAB), as determined by the Secretary.

(2) In order to obtain expedited access to judicial review (EAJR), a review entity must certify that the Council does not have the authority to decide the question of law or regulation relevant to the matters in dispute and that there is no material issue of fact in dispute.

(3) A party may make a request for EAJR only once with respect to a question of law or regulation for a specific matter in dispute in an appeal.

(b) *Conditions for making the expedited appeals request.* (1) A party may request EAJR in place of an ALJ hearing or Council review if the following conditions are met:

(i) A QIC has made a reconsideration determination and the party has filed a request for—

(A) An ALJ hearing in accordance with § 405.1002 and a decision, dismissal order, or remand order of the ALJ or attorney adjudicator has not been issued;