

(5) Either the MA organization or the Secretary may ask the hearing officer to rule on a motion for summary judgment.

(viii) *Hearing Officer decision.* The hearing officer decides whether to uphold or overturn the reconsideration official's decision, and sends a written determination to CMS and the MA organization, explaining the basis for the decision.

(ix) *Computations based on Hearing Officer's decision.* (A) Once the hearing officer's medical record review determination decision is considered final in accordance with paragraph (c)(7)(x) of this section, the Secretary recalculates the MA organization's RADV payment error and issues a revised RADV audit report superseding all prior RADV audit reports to the appellant MA organization.

(B) For MA organizations appealing the RADV payment error calculation only, once the hearing officer's payment error calculation decision is considered final in accordance with paragraph (c)(7)(x) of this section, the Secretary recalculates the MA organization's RADV payment error and issues a revised RADV audit report superseding all prior RADV audit reports to the appellant MA organization.

(x) *Effect of the Hearing Officer's decision.* The hearing officer's decision is final unless the decision is reversed or modified by the CMS Administrator.

(8) *CMS Administrator review stage.* (i) A request for CMS Administrator review must be made in writing and filed with the CMS Administrator.

(ii) CMS or a MA organization that has received a hearing officer's decision and requests review by the CMS Administrator must do so within 60 days of receipt of the hearing officer's decision.

(iii) After reviewing a request for review, the CMS Administrator has the discretion to elect to review the hearing officer's decision or to decline to review the hearing officer's decision. If the CMS Administrator does not decline to review or does not elect to review within 90 days of receipt of either the MA organization or CMS's timely request for review (whichever is later), the hearing officer's decision becomes final.

(iv) If the CMS Administrator elects to review the hearing decision—

(A) The CMS Administrator acknowledges the decision to review the hearing decision in writing and notifies CMS and the MA organization of their right to submit comments within 15 days of the date of the issuance of the notification that the Administrator has elected to review the hearing decision; and

(B) [Reserved]

(v) The CMS Administrator renders his or her final decision in writing within 60 days of the date of the issuance of the notice acknowledging his or her decision to elect to review the hearing officer's decision.

(vi) The decision of the hearing officer is final if the CMS Administrator—

(A) Declines to review the hearing officer's decision; or

(B) Does not decline to review or elect to review within 90 days of the date of the receipt of either the MA organization or CMS's request for review (whichever is later); or

(C) Does not make a decision within 60 days of the date of the issuance of the notice acknowledging his or her decision to elect to review the hearing officer's decision.

(vii) *Computations based on CMS Administrator decision.* (A) Once the CMS Administrator's medical record review determination decision is considered final in accordance with paragraph (c)(8)(vi) of this section, the Secretary recalculates the MA organization's RADV payment error and issues a revised RADV audit report superseding all prior RADV audit reports to the appellant MA organization.

(B) For MA organizations appealing the RADV payment error calculation only, once the CMS Administrator's payment error calculation decision is considered final in accordance with paragraph (c)(8)(vi) of this section, the Secretary recalculates the MA organization's RADV payment error and issues a revised and final RADV audit report superseding all prior RADV audit reports to the appellant MA organization.

(9) *Final agency action.* In cases when an MA organization files a payment error calculation appeal subsequent to a medical record review determination