

are involved in one or more other appeals pending before the same ALJ.

(2) It is within the discretion of the ALJ to grant or deny an enrollee's request for consolidation. In considering an enrollee's request, the ALJ may consider factors such as whether the issue(s) may be more efficiently decided if the appeals are consolidated for hearing. In considering the enrollee's request for consolidation, the ALJ must take into account any adjudication deadlines for each appeal and may require an enrollee to waive the adjudication deadline associated with one or more appeals if consolidation otherwise prevents the ALJ from deciding all of the appeals at issue within their respective deadlines.

(3) The ALJ may also propose on his or her own motion to consolidate two or more appeals in one hearing for administrative efficiency, but may not require an enrollee to waive the adjudication deadline for any of the consolidated cases.

(4) Notice of a consolidated hearing must be included in the notice of hearing issued in accordance with §§ 423.2020 and 423.2022.

(b) *Consolidated decision and record.* (1) If the ALJ decides to hold a consolidated hearing, he or she may make either—

(i) A consolidated decision and record; or

(ii) A separate decision and record on each appeal.

(2) If a separate decision and record on each appeal is made, the ALJ is responsible for making sure that any evidence that is common to all appeals and material to the common issue to be decided, and audio recordings of any conferences that were conducted and the consolidated hearing are included in each individual administrative record, as applicable.

(3) If a hearing will not be conducted for multiple appeals that are before the same ALJ or attorney adjudicator, and the appeals involve one or more of the same issues, the ALJ or attorney adjudicator may make a consolidated decision and record at the request of the enrollee or on the ALJ's or attorney adjudicator's own motion.

(c) *Limitation on consolidated proceedings.* Consolidated proceedings may

only be conducted for appeals filed by the same enrollee, unless multiple enrollees aggregated appeals to meet the amount in controversy requirement in accordance with § 423.2006 and the enrollees have all authorized disclosure of information to the other enrollees.

[82 FR 5134, Jan. 17, 2017, as amended at 84 FR 19873, May 7, 2019]

§ 423.2046 Notice of an ALJ or attorney adjudicator decision.

(a) *Decisions on requests for hearing—*

(1) *General rule.* Unless the ALJ or attorney adjudicator dismisses or remands the request for hearing, the ALJ or attorney adjudicator will issue a written decision that gives the findings of fact, conclusions of law, and the reasons for the decision.

(i) The decision must be based on evidence offered at the hearing or otherwise admitted into the record, and shall include independent findings and conclusions.

(ii) A copy of the decision should be mailed or otherwise transmitted to the enrollee at his or her last known address.

(iii) A copy of the written decision should also be provided to the IRE that issued the reconsideration determination, and to the Part D plan sponsor that issued the coverage determination or at-risk determination.

(2) *Content of the notice.* The decision must be provided in a manner calculated to be understood by an enrollee and must include—

(i) The specific reasons for the determination, including, to the extent appropriate, a summary of any clinical or scientific evidence used in making the determination;

(ii) The procedures for obtaining additional information concerning the decision; and

(iii) Notification of the right to appeal the decision to the Council, including instructions on how to initiate an appeal under this section.

(3) *Limitation on decision.* When the amount of payment for the Part D drug is an issue before the ALJ or attorney adjudicator, the ALJ or attorney adjudicator may make a finding as to the amount of payment due. If the ALJ or attorney adjudicator makes a finding concerning payment when the amount

of payment was not an issue before the ALJ or attorney adjudicator, the Part D plan sponsor may independently determine the payment amount. In either of the aforementioned situations, an ALJ's or attorney adjudicator's decision is not binding on the Part D plan sponsor for purposes of determining the amount of payment due. The amount of payment determined by the Part D plan sponsor in effectuating the ALJ's or attorney adjudicator's decision is a new coverage determination under § 423.566.

(b) *Decisions on requests for review of an IRE dismissal*—(1) *General rule.* Unless the ALJ or attorney adjudicator dismisses the request for review of an IRE dismissal, or the dismissal is vacated and remanded, the ALJ or attorney adjudicator will issue a written decision affirming the IRE's dismissal. OMHA mails or otherwise transmits a copy of the decision to the enrollee.

(2) *Content of the notice.* The decision must be written in a manner calculated to be understood by an enrollee and must include—

(i) The specific reasons for the determination, including a summary of the evidence considered and applicable authorities;

(ii) The procedures for obtaining additional information concerning the decision; and

(iii) Notification that the decision is binding and is not subject to further review, unless reopened and revised by the ALJ or attorney adjudicator.

(c) *Recommended decision.* An ALJ or attorney adjudicator issues a recommended decision if he or she is directed to do so in the Council's remand order. An ALJ or attorney adjudicator may not issue a recommended decision on his or her own motion. The ALJ or attorney adjudicator mails a copy of the recommended decision to the enrollee at his or her last known address.

[82 FR 5134, Jan. 17, 2017, as amended at 83 FR 16754, Apr. 16, 2018]

§ 423.2048 The effect of an ALJ's or attorney adjudicator's decision.

(a) The decision of the ALJ or attorney adjudicator on a request for hearing is binding unless—

(1) An enrollee requests a review of the decision by the Council within the

stated time period or the Council reviews the decision issued by an ALJ or attorney adjudicator under the procedures set forth in § 423.2110, and the Council issues a final decision or remand order;

(2) The decision is reopened and revised by an ALJ or attorney adjudicator or the Council under the procedures explained in § 423.1980;

(3) The expedited access to judicial review process at § 423.1990 is used;

(4) The ALJ's or attorney adjudicator's decision is a recommended decision directed to the Council and the Council issues a decision; or

(5) In a case remanded by a Federal district court, the Council assumes jurisdiction under the procedures in § 423.2138 and the Council issues a decision.

(b) The decision of the ALJ or attorney adjudicator on a request for review of an IRE dismissal is binding on the enrollee unless the decision is reopened and revised by the ALJ or attorney adjudicator under the procedures explained in § 423.1980.

[82 FR 5135, Jan. 17, 2017]

§ 423.2050 Removal of a hearing request from OMHA to the Council.

If a request for hearing is pending before OMHA, the Council may assume responsibility for holding a hearing by requesting that OMHA send the hearing request. If the Council holds a hearing, it conducts the hearing according to the rules for hearings before an ALJ. Notice is mailed to the enrollee at his or her last known address informing him or her that the Council has assumed responsibility for the case.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5135, Jan. 17, 2017]

§ 423.2052 Dismissal of a request for a hearing before an ALJ or request for review of an IRE dismissal.

(a) *Dismissal of request for hearing.* An ALJ dismisses a request for a hearing under any of the following conditions:

(1) Neither the enrollee that requested the hearing nor the enrollee's representative appears at the time and place set for the hearing, if—

(i) The enrollee was notified before the time set for the hearing that the request for hearing might be dismissed

for failure to appear, the record contains documentation that the enrollee acknowledged the notice of hearing, and the enrollee does not contact the ALJ within 10 calendar days after the hearing for non-expedited hearings and 2 calendar days after the hearing for expedited hearings, or does contact the ALJ but the ALJ determines the enrollee did not demonstrate good cause for not appearing; or

(ii) The record does not contain documentation that the enrollee acknowledged the notice of hearing, the ALJ sends a notice to the enrollee at his or her last known address asking why the enrollee did not appear, and the enrollee does not respond to the ALJ's notice within 10 calendar days for non-expedited hearings or within 2 calendar days for expedited hearings after receiving the notice, or does contact the ALJ but the ALJ determines the enrollee did not demonstrate good cause for not appearing. For expedited hearings, an enrollee may submit his or her response orally to the ALJ.

(iii) In determining whether good cause exists under paragraphs (a)(1)(i) and (ii) of this section, the ALJ considers any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the enrollee may have.

(2) The person requesting a hearing has no right to it under § 423.2002.

(3) The enrollee did not request a hearing within the stated time period and the ALJ has not found good cause for extending the deadline, as provided in § 423.2014(e).

(4) The enrollee died while the request for hearing is pending and the request for hearing was filed by the enrollee or the enrollee's representative, and the enrollee's surviving spouse or estate has no remaining financial interest in the case and the enrollee's representative, if any, does not wish to continue the appeal.

(5) The ALJ dismisses a hearing request entirely or refuses to consider any one or more of the issues because an IRE, an ALJ or attorney adjudicator, or the Council has made a previous determination or decision under this subpart about the enrollee's rights on the same facts and on the same

issue(s), and this previous determination or decision has become binding by either administrative or judicial action.

(6) The enrollee abandons the request for hearing. An ALJ may conclude that an enrollee has abandoned a request for hearing when OMHA attempts to schedule a hearing and is unable to contact the enrollee after making reasonable efforts to do so.

(7) The enrollee's request is not complete in accordance with § 423.2014(a)(1), even after the enrollee is provided with an opportunity to complete the request.

(b) *Dismissal of request for review of IRE dismissal.* An ALJ or attorney adjudicator dismisses a request for review of an IRE dismissal under any of the following conditions:

(1) The enrollee has no right to a review of the IRE dismissal under § 423.2004.

(2) The enrollee did not request a review within the stated time period and the ALJ or attorney adjudicator has not found good cause for extending the deadline, as provided in § 423.2014(e).

(3) The enrollee died while the request for review was pending and the request was filed by the enrollee or the enrollee's representative, and the enrollee's surviving spouse or estate has no remaining financial interest in the case and the enrollee's representative, if any, does not wish to continue the appeal.

(4) The enrollee's request is not complete in accordance with § 423.2014(a)(1), even after the enrollee is provided with an opportunity to complete the request.

(c) *Withdrawal of request.* At any time before notice of the decision, dismissal, or remand is mailed, if the enrollee asks to withdraw the request, an ALJ or attorney adjudicator may dismiss the request for hearing or request for review of an IRE dismissal. This request for withdrawal may be submitted in writing, or a request to withdraw a request for hearing may be made orally at a hearing before the ALJ. The request for withdrawal must include a clear statement that the enrollee is withdrawing the request for hearing or review of the IRE dismissal and does not intend to further proceed with the