

§ 423.2054

42 CFR Ch. IV (10–1–24 Edition)

appeal. If an attorney or other legal professional on behalf of an enrollee files the request for withdrawal, the ALJ or attorney adjudicator may presume that the representative has advised the enrollee of the consequences of the withdrawal and dismissal.

(d) *Notice of dismissal.* OMHA mails or otherwise transmits a written notice of the dismissal of the hearing or review request to the enrollee at his or her last known address. The written notice provides that there is a right to request that the ALJ or attorney adjudicator vacate the dismissal action.

(e) *Vacating a dismissal.* If good and sufficient cause is established, the ALJ or attorney adjudicator may vacate his or her dismissal of a request for hearing or review within 180 calendar days of the date of the notice of dismissal.

[82 FR 5135, Jan. 17, 2017, as amended at 84 FR 19873, May 7, 2019]

§ 423.2054 Effect of dismissal of a request for a hearing or request for review of an IRE's dismissal.

(a) The dismissal of a request for a hearing is binding, unless it is vacated by the Council under § 423.2108(b), or vacated by the ALJ or attorney adjudicator under § 423.2052(e).

(b) The dismissal of a request for review of an IRE dismissal of a request for reconsideration is binding and not subject to further review unless vacated by the ALJ or attorney adjudicator under § 423.2052(e).

[82 FR 5136, Jan. 17, 2017]

§ 423.2056 Remands of requests for hearing and requests for review.

(a) *Missing appeal determination or case record.* (1) If an ALJ or attorney adjudicator requests an official copy of a missing redetermination or reconsideration or an appealed coverage determination or at-risk determination in accordance with § 423.2034, and the IRE, CMS, or Part D plan sponsor does not furnish the copy within the time frame specified in § 423.2034, an ALJ or attorney adjudicator may issue a remand directing the IRE or Part D plan sponsor to reconstruct the record or, if it is not able to do so, initiate a new appeal adjudication.

(2) If the IRE does not furnish the case file for an appealed reconsider-

ation, an ALJ or attorney adjudicator may issue a remand directing the IRE to reconstruct the record or, if it is not able to do so, initiate a new appeal adjudication.

(3) If the IRE or Part D plan sponsor is able to reconstruct the record for a remanded case and returns the case to OMHA, the case is no longer remanded and the reconsideration is no longer vacated, and any adjudication period that applies to the appeal in accordance with § 423.2016 is extended by the period between the date of the remand and the date that case is returned to OMHA.

(b) *No redetermination.* If an ALJ or attorney adjudicator finds that the IRE issued a reconsideration and no redetermination was made with respect to the issue under appeal or the request for redetermination was dismissed, the reconsideration will be remanded to the IRE, or its successor, to readjudicate the request for reconsideration, unless the request for redetermination was forwarded to the IRE in accordance with § 423.590(c) or (e) without a redetermination having been conducted.

(c) *Requested remand—(1) Request contents and timing.* At any time prior to an ALJ or attorney adjudicator issuing a decision or dismissal, the enrollee and CMS, the IRE, or the Part D plan sponsor may jointly request a remand of the appeal to the IRE. The request must include the reasons why the appeal should be remanded, and indicate whether remanding the case will likely resolve the matter in dispute.

(2) *Granting the request.* An ALJ or attorney adjudicator may grant the request and issue a remand if he or she determines that remanding the case will likely resolve the matter in dispute.

(d) *Remanding an IRE's dismissal of a request for reconsideration.* (1) Consistent with § 423.2004(b), an ALJ or attorney adjudicator will remand a case to the appropriate IRE if the ALJ or attorney adjudicator determines that an IRE's dismissal of a request for reconsideration was in error.