

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.

(2) If an official copy of the notice of dismissal or case file cannot be obtained from the IRE, an ALJ or attorney adjudicator may also remand a request for review of a dismissal in accordance with the procedures in paragraph (a) of this section.

(e) *Consideration of change in condition.* The ALJ or attorney adjudicator will remand a case to the appropriate IRE if the ALJ or attorney adjudicator determines that the enrollee wants evidence on his or her change in condition after the coverage determination or at-risk determination to be considered in the appeal.

(f) *Notice of a remand.* OMHA mails or otherwise transmits a written notice of the remand of the request for hearing or request for review to the enrollee at his or her last known address, and CMS, the IRE, and/or the Part D plan sponsor if a request to be a participant was granted by the ALJ or attorney adjudicator. The notice states that there is a right to request that the Chief ALJ or a designee review the remand, unless the remand was issued under paragraph (d)(1) of this section.

(g) *Review of remand.* Upon a request by the enrollee or CMS, the IRE, or the Part D plan sponsor filed within 30 calendar days of receiving a notice of remand, the Chief ALJ or designee will review the remand, and if the remand is not authorized by this section, vacate the remand order. The determination on a request to review a remand order is binding and not subject to further review. The review of remand procedures provided for in this paragraph (g) are not available for and do not apply to remands that are issued in paragraph (d)(1) of this section.

[82 FR 5136, Jan. 17, 2017, as amended at 83 FR 16754, Apr. 16, 2018; 84 FR 19873, May 7, 2019]

#### **§ 423.2058 Effect of a remand.**

A remand of a request for hearing or request for review is binding unless vacated by the Chief ALJ or a designee in accordance with § 423.2056(g).

[82 FR 5137, Jan. 17, 2017]

#### **§ 423.2062 Applicability of policies not binding on the ALJ and Council.**

(a) ALJs or attorney adjudicators and the Council are not bound by CMS program guidance, such as program memoranda and manual instructions, but will give substantial deference to these policies if they are applicable to a particular case.

(b) If an ALJ or attorney adjudicator or Council declines to follow a policy in a particular case, the ALJ or attorney adjudicator or Council decision must explain the reasons why the policy was not followed. An ALJ or attorney adjudicator or Council decision to disregard a policy applies only to the specific coverage determination or at-risk determination being considered and does not have precedential effect.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5137, Jan. 17, 2017; 83 FR 16754, Apr. 16, 2018]

#### **§ 423.2063 Applicability of laws, regulations, CMS Rulings, and precedential decisions.**

(a) All laws and regulations pertaining to the Medicare program, including, but not limited to Titles XI, XVIII, and XIX of the Social Security Act and applicable implementing regulations, are binding on ALJs and attorney adjudicators, and the Council.

(b) CMS Rulings are published under the authority of the CMS Administrator. Consistent with § 401.108 of this chapter, rulings are binding on all CMS components, and on all HHS components that adjudicate matters under the jurisdiction of CMS.

(c) Precedential decisions designated by the Chair of the Departmental Appeals Board in accordance with § 401.109 of this chapter are binding on all CMS components, and all HHS components that adjudicate matters under the jurisdiction of CMS.

[82 FR 5137, Jan. 17, 2017]

#### **§ 423.2100 Medicare Appeals Council review: general.**

(a) An enrollee who is dissatisfied with an ALJ's or attorney adjudicator's decision or dismissal may request that the Council review the ALJ's or attorney adjudicator's decision or dismissal.