

(b) When the Council reviews an ALJ's or attorney adjudicator's written decision, it undertakes a de novo review.

(c) The Council issues a final decision, dismissal order, or remands a case to the ALJ or attorney adjudicator no later than the end of the 90 calendar day period beginning on the date the request for review is received (by the entity specified in the ALJ's or attorney adjudicator's written notice of decision), unless the 90 calendar day period is extended as provided in this subpart or the enrollee requests expedited Council review.

(d) If an enrollee requests expedited Council review, the Council issues a final decision, dismissal order or remand as expeditiously as the enrollee's health condition requires, but no later than the end of the 10 calendar day period beginning on the date the request for review is received (by the entity specified in the ALJ's or attorney adjudicator's written notice of decision), unless the 10 calendar day period is extended as provided in this subpart.

[82 FR 5137, Jan. 17, 2017, as amended at 84 FR 19874, May 7, 2019]

§ 423.2102 Request for Council review when ALJ or attorney adjudicator issues decision or dismissal.

(a)(1) An enrollee may request Council review of a decision or dismissal issued by an ALJ or attorney adjudicator if the enrollee files a written request for a Council review within 60 calendar days after receipt of the ALJ's or attorney adjudicator's written decision or dismissal.

(2) An enrollee may request that Council review be expedited if the appeal involves an issue specified in § 423.566(b) but does not include solely a request for payment of Part D drugs already furnished.

(i) If an enrollee is requesting that the Council review be expedited, the enrollee submits an oral or written request within 60 calendar days after the receipt of the ALJ's or attorney adjudicator's written decision or dismissal. A prescribing physician or other prescriber may provide oral or written support for an enrollee's request for expedited review.

(ii) The Council must document all oral requests for expedited review in writing and maintain the documentation in the case files.

(3) For purposes of this section, the date of receipt of the ALJ's or attorney adjudicator's written decision or dismissal is presumed to be 5 calendar days after the date of the notice of the decision or dismissal, unless there is evidence to the contrary.

(4) The request is considered as filed on the date it is received by the entity specified in the notice of the ALJ's or attorney adjudicator's action.

(b) An enrollee requesting a review may ask that the time for filing a request for Council review be extended if—

(1) The request for an extension of time is in writing or, for expedited reviews, in writing or oral. The Council must document all oral requests in writing and maintain the documentation in the case file.

(2) The request explains why the request for review was not filed within the stated time period. If the Council finds that there is good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, the Council uses the standards outlined at § 405.942(b)(2) and (3) of this chapter.

(c) An enrollee does not have the right to seek Council review of an ALJ's or attorney adjudicator's remand to an IRE, or an ALJ's or attorney adjudicator's affirmation of an IRE's dismissal of a request for reconsideration, or dismissal of a request to review an IRE dismissal.

[82 FR 5137, Jan. 17, 2017]

§ 423.2106 Where a request for review may be filed.

When a request for a Council review is filed after an ALJ or attorney adjudicator has issued a written decision or dismissal, the request for review must be submitted to the entity specified in the notice of the ALJ's or attorney adjudicator's action. If the request for review is timely filed with an entity other than the entity specified in the notice of the ALJ's or attorney adjudicator's action, the Council's adjudication period to conduct a review begins on the date the request for review

is received by the entity specified in the notice of the ALJ's or attorney adjudicator's action. Upon receipt of a request for review from an entity other than the entity specified in the notice of the ALJ's or attorney adjudicator's action, the Council sends written notice to the enrollee of the date of receipt of the request and commencement of the adjudication timeframe.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5137, Jan. 17, 2017]

§ 423.2108 Council Actions when request for review is filed.

(a) *General.* Except as specified in paragraph (c) of this section, when an enrollee requests that the Council review an ALJ's or attorney adjudicator's decision, the Council will review the ALJ's or attorney adjudicator's decision de novo. The enrollee requesting review does not have a right to a hearing before the Council. The Council will consider all of the evidence admitted into the administrative record. Upon completion of its review, the Council may adopt, modify, or reverse the ALJ's or attorney adjudicator's decision or remand the case to the ALJ or attorney adjudicator for further proceedings. Unless the Council's review is expedited as provided in paragraph (d) of this section, the Council must issue its action no later than 90 calendar days after receiving the request for review, unless the 90 calendar day period has been extended as provided in this subpart.

(b) *Review of ALJ's or attorney adjudicator's dismissal of a request for a hearing.* When an enrollee requests that the Council review an ALJ's or attorney adjudicator's dismissal of a request for a hearing, the Council may deny review or vacate the dismissal and remand the case to the ALJ or attorney adjudicator for further proceedings.

(c) *Council dismissal of request for review.* The Council will dismiss a request for review when the individual or entity requesting review does not have a right to a review by the MAC, or will dismiss the request for a hearing for any reason that the ALJ or attorney adjudicator could have dismissed the request for hearing.

(d) *Expedited reviews.* (1) *Standard for expedited reviews.* The Council must

provide an expedited review if the appeal involves an issue specified in § 423.566(b), but does not include solely a request for payment of Part D drugs already furnished, enrollee's prescribing physician or other prescriber indicates, or the Council determines that applying the standard timeframe for making a decision may seriously jeopardize the enrollee's life or health or ability to regain maximum function. The Council may consider this standard as met if a lower level adjudicator has granted a request for an expedited appeal.

(2) *Grant of a request.* If the Council grants a request for expedited review, the Council must:

(i) Make this decision within 5 calendar days of receipt of the request for expedited review;

(ii) Give the enrollee prompt oral notice of this decision; and

(iii) Issue a decision, dismissal order or remand, as expeditiously as the enrollee's health condition requires, but no later than the end of the 10 calendar day period beginning on the date the request for review is received by the entity specified in the ALJ's or attorney adjudicator's written notice of decision.

(3) *Denial of a request.* If the Council denies a request for expedited review, the Council must:

(i) Make this decision within 5 calendar days of receipt of the request for expedited review;

(ii) Give the enrollee and Part D plan sponsor within 5 calendar days of receiving the request written notice of the denial. The written notice must inform the enrollee of the denial and explain that the Council will process the enrollee's request using the 90 calendar day timeframe for non-expedited reviews.

(4) *Decision on a request.* A decision on a request for expedited review may not be appealed.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5137 Jan. 17, 2017]

§ 423.2110 Council reviews on its own motion.

(a) *General rule.* The Council may decide on its own motion to review a decision or dismissal issued by an ALJ or attorney adjudicator. CMS or the IRE