

(3) Any enforcement request by the Council must consist of a written notice to the Secretary describing in detail the Council's findings of non-compliance and its specific request for enforcement, and providing a copy of the subpoena and evidence of its receipt by certified mail by the enrollee or other person or entity subject to the subpoena.

(4) The Council must promptly mail a copy of the notice and related documents to the enrollee or other person or entity subject to the subpoena, and to any other affected person.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5138, Jan. 17, 2017; 83 FR 16754, Apr. 16, 2018]

§ 423.2124 Oral argument.

An enrollee may request to appear before the Council to present oral argument.

(a) The Council grants a request for oral argument if it decides that the case raises an important question of law, policy, or fact that cannot be readily decided based on written submissions alone.

(b) The Council may decide on its own that oral argument is necessary to decide the issues in the case. If the Council decides to hear oral argument, it informs the enrollee of the time and place of the oral argument at least 10 calendar days before the scheduled date or, in the case of an expedited review, at least 2 calendar days before the scheduled date.

(c) In case of a previously unrepresented enrollee, a newly hired representative may request an extension of time for preparation of the oral argument and the Council must consider whether the extension is reasonable.

(d) The Council may also request, but not require, CMS, the IRE, and/or the Part D plan sponsor to appear before it if the Council determines that it may be helpful in resolving the issues in the case.

(e) The Council cannot draw any adverse inference if CMS, the IRE, and/or the Part D plan sponsor decide not to participate in the oral argument.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5138, Jan. 17, 2017]

§ 423.2126 Case remanded by the Council.

(a) *When the Council may remand a case to the ALJ or attorney adjudicator.*

(1) The Council may remand a case in which additional evidence is needed or additional action by the ALJ or attorney adjudicator is required. The Council will designate in its remand order whether the ALJ or attorney adjudicator will issue a decision or a recommended decision on remand.

(2) *Action by ALJ or attorney adjudicator on remand.* The ALJ or attorney adjudicator will take any action that is ordered by the Council and may take any additional action that is not inconsistent with the Council's remand order.

(3) *Notice when case is returned with a recommended decision.* When the ALJ or attorney adjudicator sends a case to the Council with a recommended decision, a notice is mailed to the enrollee at his or her last known address. The notice tells the enrollee that the case was sent to the Council, explains the rules for filing briefs or other written statements with the Council, and includes a copy of the recommended decision.

(4) *Filing briefs with the Council when ALJ or attorney adjudicator issues recommended decision.* (i) An enrollee may file with the Council briefs or other written statements about the facts and law relevant to the case within 20 calendar days of the date on the recommended decision or with the request for review for expedited appeals. An enrollee may ask the Council for additional time to file a brief or written statement. The Council will extend this period, as appropriate, if the enrollee shows that he or she has good cause for requesting the extension.

(ii) All other rules for filing briefs with and obtaining evidence from the Council follow the procedures explained in this subpart.

(5) *Procedures before the Council.* (i) The Council, after receiving a recommended decision, will conduct proceedings and issue its decision or dismissal according to the procedures explained in this subpart.

(ii) If the Council determines that more evidence is required, it may again remand the case to an ALJ or attorney