

§ 423.2128

adjudicator for further inquiry into the issues, rehearing if applicable, receipt of evidence, and another decision or recommended decision. However, if the Council decides that it can get the additional evidence more quickly, it will take appropriate action.

(b) *When the Council must remand a case to the Part D IRE.* The Council will remand a case to the appropriate Part D IRE if the Council determines that the enrollee wishes evidence on his or her change in condition after the coverage determination or at-risk determination to be considered in the appeal.

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

§ 423.2128 Action of the Council.

(a) After it has reviewed all the evidence in the administrative record and any additional evidence received, subject to the limitations on Council consideration of additional evidence in § 423.2122, the Council will make a decision or remand the case to an ALJ or attorney adjudicator.

(b) The Council may adopt, modify, or reverse the ALJ or attorney adjudicator decision or recommended decision.

(c) The Council mails a copy of its decision to the enrollee at his or her last known address, to CMS, to the IRE, and to the Part D plan sponsor.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5139, Jan. 17, 2017]

§ 423.2130 Effect of the Council's decision.

The Council's decision is final and binding unless a Federal District Court issues a decision modifying the Council's decision or the decision is revised as the result of a reopening in accordance with § 423.1980. An enrollee may file an action in a Federal District Court within 60 calendar days after the date the enrollee receives written notice of the Council's decision.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5139, Jan. 17, 2017]

42 CFR Ch. IV (10–1–24 Edition)

§ 423.2134 Extension of time to file action in Federal District Court.

(a) An enrollee may request that the time for filing an action in a Federal District Court be extended.

(b) The request must:

(1) Be in writing.

(2) Give the reasons why the action was not filed within the stated time period.

(3) Be filed with the Council.

(c) If the enrollee shows that he or she had good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, the Council uses the standards specified in §§ 405.942(b)(2) or (b)(3) of this chapter.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5139, Jan. 17, 2017]

§ 423.2136 Judicial review.

(a) *General rule—*(1) *Review of Council decision.* To the extent authorized by sections 1876(c)(5)(B) and 1860D–4(h) of the Act, an enrollee may obtain a court review of a Council decision if—

(i) It is a final decision of the Secretary; and

(ii) The amount in controversy meets the threshold requirements of § 423.2006.

(2) *Review of ALJ's or attorney adjudicator's decision.* To the extent authorized by sections 1876(c)(5)(B) and 1860D–4(h) of the Act, the enrollee may request judicial review of an ALJ's or attorney adjudicator's decision if—

(i) The Council denied the enrollee's request for review; and

(ii) The amount in controversy meets the threshold requirements of § 423.2006.

(b) *Court in which to file civil action.*

(1) Any civil action described in paragraph (a) of this section must be filed in the District Court of the United States for the judicial district in which the enrollee resides.

(2) If the enrollee does not reside within any judicial district, the civil action must be filed in the District Court of the United States for the District of Columbia.

(c) *Time for filing civil action.* (1) Any civil action described in paragraph (a) of this section must be filed within the time periods specified in § 423.2130 or § 423.2134, as applicable.

(2) For purposes of this section, the date of receipt of the notice of the