

## § 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

Council's decision shall be presumed to be 5 calendar days after the date of the notice, unless there is a reasonable showing to the contrary.

(3) Where a case is certified for judicial review in accordance with the expedited access to judicial review process in § 423.1990, the civil action must be filed within 60 calendar days after receipt of the review entity's certification, except where the time is extended by the ALJ or attorney adjudicator or Council, as applicable, upon a showing of good cause.

(d) *Proper defendant.* (1) In any civil action described in paragraph (a) of this section, the Secretary of HHS, in his or her official capacity, is the proper defendant. Any civil action properly filed shall survive notwithstanding any change of the person holding the Office of the Secretary of HHS or any vacancy in such office.

(2) If the complaint is erroneously filed against the United States or against any agency, officer, or employee of the United States other than the Secretary, the plaintiff enrollee will be notified that he or she has named an incorrect defendant and is granted 60 calendar days from the date of receipt of the notice in which to commence the action against the correct defendant, the Secretary.

(e) *Standard of review.* (1) Under section 205(g) of the Act, the findings of the Secretary of HHS as to any fact, if supported by substantial evidence, are conclusive.

(2) When the Secretary's decision is adverse to an enrollee due to an enrollee's failure to submit proof in conformity with a regulation prescribed under section 205(a) of the Act pertaining to the type of proof an enrollee must offer to establish entitlement to payment, the court will review only whether the proof conforms with the regulation and the validity of the regulation.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5139, Jan. 17, 2017; 84 FR 19874, May 7, 2019]

**§ 423.2138 Case remanded by a Federal District Court.**

When a Federal District Court remands a case to the Secretary for further consideration, unless the court

order specifies otherwise, the Council, acting on behalf of the Secretary, may make a decision, or it may remand the case to an ALJ or attorney adjudicator with instructions to take action and either issue a decision, take other action, or return the case to the Council with a recommended decision. If the Council remands a case, the procedures specified in § 423.2140 will be followed.

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

**§ 423.2140 Council Review of ALJ or attorney adjudicator decision in a case remanded by a Federal District Court.**

(a) *General rules.* (1) In accordance with § 423.2138, when a case is remanded by a Federal District Court for further consideration and the Council remands the case to an ALJ or attorney adjudicator, a decision subsequently issued by the ALJ or attorney adjudicator becomes the final decision of the Secretary unless the Council assumes jurisdiction.

(2) The Council may assume jurisdiction based on written exceptions to the decision of the ALJ or attorney adjudicator that an enrollee files with the Council or based on its authority under paragraph (c) of this section.

(3) The Council either makes a new, independent decision based on the entire record that will be the final decision of the Secretary after remand, or remands the case to an ALJ or attorney adjudicator for further proceedings.

(b) *An enrollee files exceptions disagreeing with the decision of the ALJ or attorney adjudicator.* (1) If an enrollee disagrees with an ALJ or attorney adjudicator decision described in paragraph (a) of this section, in whole or in part, he or she may file exceptions to the decision with the Council.

(2) Exceptions may be filed by submitting a written statement to the Council setting forth the reasons for disagreeing with the decision of the ALJ or attorney adjudicator.

(i) The enrollee must file exceptions within 30 calendar days of the date the enrollee receives the decision of the ALJ or attorney adjudicator or submit a written request for an extension within the 30 calendar day period.