

§ 426.480 Withdrawing an appeal of an ALJ's decision.

(a) *Withdrawal of an appeal of an ALJ's decision.* A party who filed an appeal of an ALJ's decision may withdraw the appeal before the Board issues a decision regarding the ALJ's decision.

(b) *Process of withdrawing an appeal of an ALJ's decision.* To withdraw an appeal of an ALJ's decision, the party who filed the appeal must send a written notice announcing the intent to withdraw to the Board and to any other party.

(c) *Actions the Board must take upon receiving a notice announcing the intent to withdraw an appeal of an ALJ's decision—*(1) *Appeals involving one aggrieved party, or initiated by CMS or a contractor.* If the Board receives a notice withdrawing an appeal of an ALJ's decision before the Board has issued its decision, the Board must issue a decision dismissing the appeal.

(2) *Appeals involving joint complaints.* If the Board receives a notice withdrawing an appeal from an aggrieved party who is named in a joint appeal before the Board issues its decision, the Board must issue a decision dismissing only that aggrieved party from the appeal. The Board must continue its review of the ALJ's decision for the remaining aggrieved party or parties.

§ 426.482 Issuance and notification of a Board decision.

The Board must issue a written decision, including a description of appeal rights, to all parties to the review of the ALJ decision.

§ 426.484 Mandatory provisions of a Board decision.

(a) *Findings.* A Board decision must include at least one of the following:

- (1) A statement upholding the part(s) of the ALJ decision named in the appeal.
- (2) A statement reversing the part(s) of the ALJ decision named in the appeal.
- (3) A statement modifying the part(s) of the ALJ decision named in the appeal.
- (4) A statement dismissing the appeal of an ALJ decision and a rationale for the dismissal.

(b) *Other information.* A Board decision must include all of the following:

- (1) The date of issuance.
- (2) The docket number of the review of the ALJ decision.
- (3) A summary of the ALJ's decision.
- (4) A rationale for the basis of the Board's decision.

§ 426.486 Prohibited provisions of a Board decision.

A Board decision must not do any of the following:

- (a) Order CMS or its contractors to add any language to a provision or provisions of an LCD.
- (b) Order CMS or its contractors to pay a specific claim.
- (c) Set a time limit to establish a new or revised LCD.
- (d) Review or evaluate an LCD other than the LCD named in the ALJ's decision.
- (e) Include a requirement for CMS or its contractors that specifies payment, coding, or system changes for an LCD or deadlines for implementing these changes.
- (f) Order CMS or its contractors to implement an LCD in a particular manner.

§ 426.487 Board's record on appeal of an ALJ's decision.

(a) *Elements of the Board's LCD review record furnished to the public.* Except as provided in paragraph (b) of this section, the Board's LCD review record consists of any document or material that the Board compiled or considered during an LCD review, including, but not limited to, the following:

- (1) The LCD complaint.
- (2) The LCD and LCD record.
- (3) The supplemental LCD record, if applicable.
- (4) Transcripts of record.
- (5) Any other relevant evidence gathered under § 426.440.
- (6) The ALJ's decision.
- (7) The Board's decision.

(b) *Elements of the Board's LCD appeal record furnished to the court under seal.* The Board's LCD review record must include, under seal, any proprietary data or privileged information submitted and reviewed in the LCD review process, and that data or information must not be included in the review