

mailing address will be made available on the Board's Web site at www.hhs.gov/dab/divisions/appellate.

(b) All submissions after the notice of appeal should identify the Board's docket number (the Board's acknowledgement under §16.7 will specify the docket number).

(c) Unless the Board otherwise specifies, parties shall submit to the Board an original and two copies of all materials. Each submission other than the notice of appeal, must include a statement that one copy of the materials has been sent to the other party, identifying when and to whom the copy was sent.

(d) Unless hand delivered, all materials should be sent to the Board and the other party by certified or registered mail, return receipt requested.

(e) The Board considers material to be submitted on the date when it is postmarked or hand delivered to the Board.

[46 FR 43817, Aug. 31, 1981, as amended at 81 FR 3012, Jan. 20, 2016]

§ 16.21 Record and decisions.

(a) Each decision is issued by three Board members (see §16.5(b)), who base their decision on a record consisting of the appeal file; other submissions of the parties; transcripts or other records of any meetings, conferences or hearings conducted by the Board; written statements resulting from conferences; evidence submitted at hearings; and orders and other documents issued by the Board. In addition, the Board may include other materials (such as evidence submitted in another appeal) after the parties are given notice and an opportunity to comment.

(b) The Board will promptly notify the parties in writing of any disposition of a case and the basis for the disposition.

§ 16.22 The effect of an appeal.

(a) *General.* Until the Board disposes of an appeal, the respondent shall take no action to implement the final decision appealed.

(b) *Exceptions.* The respondent may—

(1) Suspend funding (see §75.371 of this title);

(2) Defer or disallow other claims questioned for reasons also disputed in the pending appeal;

(3) In programs listed in appendix A, B.(a)(1), to this part implement a decision to disallow Federal financial participation claimed in expenditures reported on a statement of expenditures, by recovering, withholding or offsetting payments, if the decision is issued before the reported expenditures are included in the calculation of a subsequent grant;

(4) Take other action to recover, withhold, or offset funds if specifically authorized by statute or regulation; or

(5) Take action to require a State to suspend procedural disenrollments, as defined at 42 CFR 430.5, or continue the accrual of the civil money penalties a State owes under 42 CFR 430.49(c).

[46 FR 43817, Aug. 31, 1981, as amended at 81 FR 3012, Jan. 20, 2016; 88 FR 84737, Dec. 6, 2023]

§ 16.23 How long an appeal takes.

The Board has established general goals for its consideration of cases, as follows (measured from the point when the Board receives the first submission after the notice of appeal):

- For regular review based on a written record under §16.8, 6 months. When a conference under §16.10 is held, the goal remains at 6 months, unless a requirement for post-conference briefing in a particular case renders the goal unrealistic.
- For cases involving a hearing under §16.11, 9 months.
- For the expedited process under §16.12, 3 months.

These are goals, not rigid requirements. The paramount concern of the Board is to take the time needed to review a record fairly and adequately in order to produce a sound decision. Furthermore, many factors are beyond the Board's direct control, such as unforeseen delays due to the parties' negotiations or requests for extensions, how many cases are filed, and Board resources. On the other hand, the parties may agree to steps which may shorten review by the Board; for example, by waiving the right to submit a brief, by agreeing to shorten submission schedules, or by electing the expedited process.