

§ 498.23

this section, it may file a written request with CMS, stating the reasons why the request was not filed timely.

(2) CMS will extend the time for filing a request for reconsideration if the affected party shows good cause for missing the deadline.

§ 498.23 Withdrawal of request for reconsideration.

A request for reconsideration is considered withdrawn if the requestor files a written withdrawal request before CMS mails the notice of reconsidered determination, and CMS approves the withdrawal request.

§ 498.24 Reconsidered determination.

When a request for reconsideration has been properly filed in accordance with § 498.22, CMS—

(a) Receives written evidence and statements that are relevant and material to the matters at issue and are submitted within a reasonable time after the request for reconsideration;

(b) Considers the initial determination, the findings on which the initial determination was based, the evidence considered in making the initial determination, and any other written evidence submitted under paragraph (a) of this section, taking into account facts relating to the status of the prospective provider or supplier subsequent to the initial determination; and

(c) Makes a reconsidered determination, affirming or modifying the initial determination and the findings on which it was based.

§ 498.25 Notice and effect of reconsidered determination.

(a) *Notice.* (1) CMS mails notice of a reconsidered determination to the affected party.

(2) The notice gives the reasons for the determination.

(3) If the determination is adverse, the notice specifies the conditions or requirements of law or regulations that the affected party fails to meet, and informs the party of its right to a hearing.

(b) *Effect.* A reconsidered determination is binding unless—

(1) CMS or the OIG, as appropriate, further revises the revised determination; or

42 CFR Ch. IV (10–1–05 Edition)

(2) The revised determination is reversed or modified by a hearing decision.

Subpart C—Reopening of Initial or Reconsidered Determinations

§ 498.30 Limitation on reopening.

An initial or reconsidered determination that a prospective provider is a provider or that a hospital qualifies to elect to claim payment for all emergency services furnished in a calendar year may not be reopened. CMS or the OIG, as appropriate, may on its own initiative, reopen any other initial or reconsidered determination, within 12 months after the date of notice of the initial determination.

§ 498.32 Notice and effect of reopening and revision.

(a) *Notice.* (1) CMS or the OIG, as appropriate, gives the affected party notice of reopening and of any revision of the reopened determination.

(2) The notice of revised determination states the basis or reason for the revised determination.

(3) If the determination is that a supplier or prospective supplier does not meet the conditions for coverage of its services, the notice specifies the conditions with respect to which the affected party fails to meet the requirements of law and regulations, and informs the party of its right to a hearing.

(b) *Effect.* A revised determination is binding unless

(1) The affected party requests a hearing before an ALJ; or

(2) CMS or the OIG further revises the revised determination.

Subpart D—Hearings

§ 498.40 Request for hearing.

(a) *Manner and timing of request.* (1) An affected party entitled to a hearing under § 498.5 may file a request for a hearing with CMS or the OIG, as appropriate, or with OHA.

(2) The affected party or its legal representative or other authorized official must file the request in writing within 60 days from receipt of the notice of

initial, reconsidered, or revised determination unless that period is extended in accordance with paragraph (c) of this section. (Presumed date of receipt is determined in accordance with § 498.22(b)(3)).

(b) *Content of request for hearing.* The request for hearing must—

(1) Identify the specific issues, and the findings of fact and conclusions of law with which the affected party disagrees; and

(2) Specify the basis for contending that the findings and conclusions are incorrect.

(c) *Extension of time for filing a request for hearing.* If the request was not filed within 60 days—

(1) The affected party or its legal representative or other authorized official may file with the ALJ a written request for extension of time stating the reasons why the request was not filed timely.

(2) For good cause shown, the ALJ may extend the time for filing the request for hearing.

§ 498.42 Parties to the hearing.

The parties to the hearing are the affected party and CMS or the OIG, as appropriate.

§ 498.44 Designation of hearing official.

(a) The Associate Commissioner for Hearings and Appeals, or his or her delegate designates an ALJ or a member or members of the Departmental Appeals Board to conduct the hearing.

(b) If appropriate, the Associate Commissioner or the delegate may substitute another ALJ or another member or other members of the Departmental Appeals Board to conduct the hearing.

(c) As used in this part, “ALJ” includes a member or members of the Departmental Appeals Board who are designated to conduct a hearing.

§ 498.45 Disqualification of Administrative Law Judge.

(a) An ALJ may not conduct a hearing in a case in which he or she is prejudiced or partial to the affected party or has any interest in the matter pending for decision.

(b) A party that objects to the ALJ designated to conduct the hearing must give notice of its objections at the earliest opportunity.

(c) The ALJ will consider the objections and decide whether to withdraw or proceed with the hearing.

(1) If the ALJ withdraws, another will be designated to conduct the hearing.

(2) If the ALJ does not withdraw, the objecting party may, after the hearing, present its objections to the Departmental Appeals Board as reasons for changing, modifying, or reversing the ALJ’s decision or providing a new hearing before another ALJ.

§ 498.47 Prehearing conference.

(a) At any time before the hearing, the ALJ may call a prehearing conference for the purpose of delineating the issues in controversy, identifying the evidence and witnesses to be presented at the hearing, and obtaining stipulations accordingly.

(b) On the request of either party or on his or her own motion, the ALJ may adjourn the prehearing conference and reconvene at a later date.

§ 498.48 Notice of prehearing conference.

(a) *Timing of notice.* The ALJ will fix a time and place for the prehearing conference and mail written notice to the parties at least 10 days before the scheduled date.

(b) *Content of notice.* The notice will inform the parties of the purpose of the conference and specify what issues are sought to be resolved, agreed to, or excluded.

(c) *Additional issues.* Issues other than those set forth in the notice of determination or the request for hearing may be considered at the prehearing conference if—

(1) Either party gives timely notice to that effect to the ALJ and the other party; or

(2) The ALJ raises the issues in the notice of prehearing conference or at the conference.