

or dismissal issued by an ALJ. CMS or any of its contractors may refer a case to the MAC for it to consider reviewing under this authority anytime within 60 days after the date of an ALJ's decision or dismissal.

(b) *Referral of cases.* (1) CMS or any of its contractors may refer a case to the MAC if, in their view, the decision or dismissal contains an error of law material to the outcome of the claim or presents a broad policy or procedural issue that may affect the public interest. CMS may also request that the MAC take own motion review of a case if—

(i) CMS or its contractor participated in the appeal at the ALJ level; and

(ii) In CMS' view, the ALJ's decision or dismissal is not supported by the preponderance of evidence in the record or the ALJ abused his or her discretion.

(2) CMS's referral to the MAC is made in writing and must be filed with the MAC no later than 60 days after the ALJ's decision or dismissal is issued. The written referral will state the reasons why CMS believes that the MAC must review the case on its own motion. CMS will send a copy of its referral to all parties to the ALJ's action and to the ALJ. Parties to the ALJ's action may file exceptions to the referral by submitting written comments to the MAC within 20 days of the referral notice. A party submitting comments to the MAC must send such comments to CMS and all other parties to the ALJ's decision.

(c) *Standard of review.* (1) Referral by CMS after participation at the ALJ level. If CMS or its contractor participated in an appeal at the ALJ level, the MAC exercises its own motion authority if there is an error of law material to the outcome of the case, an abuse of discretion by the ALJ, the decision is not consistent with the preponderance of the evidence of record, or there is a broad policy or procedural issue that may affect the general public interest. In deciding whether to accept review under this standard, the MAC will limit its consideration of the ALJ's action to those exceptions raised by CMS.

(2) *Referral by CMS when CMS did not participate in the ALJ proceedings or ap-*

pear as a party. The MAC will accept review if the decision or dismissal contains an error of law material to the outcome of the case or presents a broad policy or procedural issue that may affect the general public interest. In deciding whether to accept review, the MAC will limit its consideration of the ALJ's action to those exceptions raised by CMS.

(d) *MAC's action.* If the MAC decides to review a decision or dismissal on its own motion, it will mail the results of its action to all the parties to the hearing and to CMS if it is not already a party to the hearing. The MAC may adopt, modify, or reverse the decision or dismissal, may remand the case to an ALJ for further proceedings or may dismiss a hearing request. The MAC must issue its action no later than 90 days after receipt of the CMS referral, unless the 90-day period has been extended as provided in this subpart. The MAC may not, however, issue its action before the 20-day comment period has expired, unless it determines that the agency's referral does not provide a basis for reviewing the case. If the MAC does not act within the applicable adjudication deadline, the ALJ's decision or dismissal remains the final action in the case.

§ 405.1112 Content of request for review.

(a) The request for MAC review must be filed with the MAC or appropriate ALJ hearing office. The request for review must be in writing and may be made on a standard form. A written request that is not made on a standard form is accepted if it contains the beneficiary's name; Medicare health insurance claim number; the specific service(s) or item(s) for which the review is requested; the specific date(s) of service; the date of the ALJ's final action, if any, if the party is requesting escalation from the ALJ to the MAC, the hearing office in which the appellant's request for hearing is pending; and the name and signature of the party or the representative of the party; and any other information CMS may decide.

(b) The request for review must identify the parts of the ALJ action with

§ 405.1114

which the party requesting review disagrees and explain why he or she disagrees with the ALJ's decision, dismissal, or other determination being appealed. For example, if the party requesting review believes that the ALJ's action is inconsistent with a statute, regulation, CMS Ruling, or other authority, the request for review should explain why the appellant believes the action is inconsistent with that authority.

(c) The MAC will limit its review of an ALJ's actions to those exceptions raised by the party in the request for review, unless the appellant is an unrepresented beneficiary. For purposes of this section only, we define a representative as anyone who has accepted an appointment as the beneficiary's representative, except a member of the beneficiary's family, a legal guardian, or an individual who routinely acts on behalf of the beneficiary, such as a family member or friend who has a power of attorney.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37704, June 30, 2005]

§ 405.1114 Dismissal of request for review.

The MAC dismisses a request for review if the party requesting review did not file the request within the stated period of time and the time for filing has not been extended. The MAC also dismisses the request for review if—

(a) The party asks to withdraw the request for review;

(b) The party does not have a right to request MAC review; or

(c) The beneficiary whose claim is being appealed died while the request for review is pending and all of the following criteria apply:

(1) The request for review was filed by the beneficiary or the beneficiary's representative, and the beneficiary's surviving spouse or estate has no remaining financial interest in the case. In deciding this issue, the MAC considers whether the surviving spouse or estate remains liable for the services that were denied or a Medicare contractor held the beneficiary liable for subsequent similar services under the limitation of liability provisions based on the denial of the services at issue;

42 CFR Ch. IV (10–1–06 Edition)

(2) No other individual or entity with a financial interest in the case wishes to pursue an appeal under § 405.1102;

(3) No other party to the ALJ hearing filed a valid and timely review request under § 405.1102 and § 405.1112.

§ 405.1116 Effect of dismissal of request for MAC review or request for hearing.

The dismissal of a request for MAC review or denial of a request for review of a dismissal issued by an ALJ is binding and not subject to further review unless reopened and vacated by the MAC. The MAC's dismissal of a request for hearing is also binding and not subject to judicial review.

§ 405.1118 Obtaining evidence from the MAC.

A party may request and receive a copy of all or part of the record of the ALJ hearing, including the exhibits list, documentary evidence, and a copy of the tape of the oral proceedings. However, the party may be asked to pay the costs of providing these items. If a party requests evidence from the MAC and an opportunity to comment on that evidence, the time beginning with the MAC's receipt of the request for evidence through the expiration of the time granted for the party's response will not be counted toward the 90-day adjudication deadline.

§ 405.1120 Filing briefs with the MAC.

Upon request, the MAC will give the party requesting review, as well as all other parties, a reasonable opportunity to file briefs or other written statements about the facts and law relevant to the case. Any party who submits a brief or statement must send a copy to all of the other parties. Unless the party requesting review files the brief or other statement with the request for review, the time beginning with the date of receipt of the request to submit the brief and ending with the date the brief is received by the MAC will not be counted toward the adjudication timeframe set forth in § 405.1100. The MAC may also request, but not require, CMS or its contractor to file a brief or position paper if the MAC determines that it is necessary to resolve the issues in the case. The MAC will not draw any