

§ 405.747

§ 405.747 Dismissal of request for hearing; amount in controversy less than \$100.

The ALJ shall, without holding a hearing, dismiss the request for hearing if the request for hearing plainly shows that less than \$100 is in controversy. If a hearing is held and the ALJ finds that the amount in controversy is less than \$100, the ALJ shall dismiss the request for hearing and will not rule on the substantive issues involved in the appeal.

[37 FR 5814, Mar. 23, 1972. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 62 FR 25855, May 12, 1997]

§ 405.750 Time period for reopening initial, revised, or reconsidered determinations and decisions or revised decisions of an ALJ or the Departmental Appeals Board (DAB); binding effect of determination and decisions.

(a) *Reopenings concerning applications and entitlement.* A determination, or decision, or revised determination or decision made by the SSA concerning any matter under § 405.704(a), may be reopened and revised under 20 CFR 404.988 (Conditions for reopening).

(b) *Reopenings concerning a request for payment.* An initial, revised, or reconsidered determination of CMS, or a decision or revised decision of an ALJ or of the DAB, with respect to an individual's right concerning a request for payment under Medicare Part A, which is otherwise binding under 20 CFR 404.955 or 404.981 and §§ 405.708 or 405.717 of this subpart may be reopened:

(1) Within 12 months from the date of the notice of the initial or reconsidered determination to the party to such determination;

(2) After such 12-month period, but within 4 years after the date of the notice of the initial determination to the individual, upon establishment of good cause for reopening such determination or decision (see 20 CFR 404.988(b) and 404.989); or

(3) At any time, when:

(i) Such initial, revised, or reconsidered determination or such decision or revised decision is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting clerical error or error on the face of the

42 CFR Ch. IV (10–1–06 Edition)

evidence on which such determination or decision was based; or

(ii) Such initial, revised, or reconsidered determination or such decision or revised decision was procured by fraud or similar fault of the beneficiary or some other person.

[45 FR 73933, Nov. 7, 1980, as amended at 61 FR 32348, June 24, 1996; 62 FR 25853, 25855, May 12, 1997]

§ 405.753 Appeal of a categorization of a device.

(a) CMS's acceptance of the FDA categorization of a device as an experimental/investigational (Category A) device under § 405.203 is a national coverage decision under section 1862(a)(1) of the Act.

(b) CMS's acceptance of the FDA categorization of a device as an experimental/investigational (Category A) device under § 405.203 is an aspect of an initial determination that, under section 1862 of the Act, payment may not be made.

(c) In accordance with section 1869(b)(3)(A) of the Act, CMS's acceptance of the FDA categorization of a device as an experimental/investigational (Category A) device under § 405.203 may not be reviewed by an administrative law judge.

[60 FR 48424, Sept. 19, 1995]

Subpart H—Appeals Under the Medicare Part B Program

AUTHORITY: Secs. 1102, 1842(b)(3)(C), 1869(b), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395u(b)(3)(C), 1395ff(b), and 1395hh).

SOURCE: 32 FR 18028, Dec. 16, 1967, unless otherwise noted. Redesignated at 42 FR 52826, Sept. 30, 1977.

§ 405.801 Part B appeals—general description.

(a) The Medicare carrier makes an initial determination when a request for payment for Part B benefits is submitted. If an individual beneficiary is dissatisfied with the initial determination, he or she may request, and the carrier will perform, a review of the claim. Following the carrier's review determination, the beneficiary may obtain a carrier hearing if the amount remaining in controversy is at least \$100.

The beneficiary is also entitled to a carrier hearing without the benefit of a review determination when the initial request for payment is not being acted upon with reasonable promptness (as defined in § 405.802). Following the carrier hearing, the beneficiary may obtain a hearing before an ALJ if the amount remaining in controversy is at least \$500. If the beneficiary is dissatisfied with the decision of the ALJ, he or she may request the Departmental Appeals Board (DAB) to review the case. Following the action of the DAB, the beneficiary may file suit in Federal district court if the amount remaining in controversy is at least \$1,000.

(b) The rights of a beneficiary under paragraph (a) of this section to appeal the carrier's initial determination are granted also to—

(1) A physician or supplier that furnishes services to a beneficiary and that accepts an assignment from the beneficiary, or

(2) A physician who meets the conditions of section 1842(l)(1)(A) of the Act pertaining to refund requirements for nonparticipating physicians who have not taken assignment on the claim(s) at issue.

(c) Procedures governing the determinations by SSA as to whether an individual has met basic Part B entitlement requirements are covered in subpart G of this part and 20 CFR part 404, subpart J. Subparts J and R of 20 CFR part 404 are also applicable to ALJ, DAB, and judicial review conducted under subpart H, except to the extent that specific provisions are contained in this subpart.

[62 FR 25853, May 12, 1997]

§ 405.802 Definitions.

As used in subpart H of this part, the term—

After receipt of the notice means 5 days after the date on the notice, unless it is shown that the notice was received earlier or later.

Appellant designates the beneficiary, assignee or other person or entity that has filed an appeal concerning a particular determination of benefits under Medicare part B. Designation as an appellant does not in itself convey standing to appeal the determination in question.

Assignee means a physician or supplier who furnishes services to a beneficiary under Medicare part B and who has accepted a valid assignment executed by the beneficiary.

Assignment means the transfer by the assignor of his or her claim for payment to the assignee in return for the latter's promise not to charge more for his or her services than the carrier finds to be the reasonable charge or other approved amount.

Assignor means a beneficiary under Medicare part B whose physician or supplier has taken assignment of a claim.

Carrier means an organization which has entered into a contract with the Secretary pursuant to section 1842 of the Act and which is authorized to make determinations with respect to part B of title XVIII of the Act. For purposes of this subpart, the term carrier also refers to an intermediary that has entered into a contract with the Secretary under section 1816 of the Act and is authorized to make determinations with respect to part B provider services, as specified in § 421.5(c) of this chapter.

Common issues of law and fact, with respect to the aggregation of claims by two or more appellants to meet the minimum amount in controversy needed for an ALJ hearing, occurs when the claims sought to be aggregated are denied or reduced for similar reasons and arise from a similar fact pattern material to the reason the claims are denied.

Delivery of similar or related services, with respect to the aggregation of claims by two or more physician/supplier appellants to meet the minimum amount in controversy needed for an ALJ hearing, means like or coordinated services or items provided to the same beneficiary by the appellants.

Representative means an individual meeting the conditions described in §§ 405.870 through 405.871.

With reasonable promptness means within a period of 60 consecutive days after the receipt by the carrier of a request for payment.

[59 FR 12182, Mar. 16, 1994, as amended at 62 FR 25853, May 12, 1997]