

§ 405.1102

days of receipt of the appellant's request for escalation, unless the 180 calendar day period is extended as provided in this subpart.

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65336, Dec. 9, 2009]

§ 405.1102 Request for MAC review when ALJ issues decision or dismissal.

(a)(1) A party to the ALJ hearing may request a MAC review if the party files a written request for a MAC review within 60 calendar days after receipt of the ALJ's decision or dismissal.

(2) For purposes of this section, the date of receipt of the ALJ's decision or dismissal is presumed to be 5 calendar days after the date of the notice of the decision or dismissal, unless there is evidence to the contrary.

(3) The request is considered as filed on the date it is received by the entity specified in the notice of the ALJ's action.

(b) A party requesting a review may ask that the time for filing a request for MAC review be extended if—

(1) The request for an extension of time is in writing;

(2) It is filed with the MAC; and

(3) It explains why the request for review was not filed within the stated time period. If the MAC finds that there is good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, the MAC uses the standards outlined at §§ 405.942(b)(2) and 405.942(b)(3).

(c) A party does not have the right to seek MAC review of an ALJ's remand to a QIC or an ALJ's affirmation of a QIC's dismissal of a request for reconsideration.

(d) For purposes of requesting MAC review (§ 405.1100 through § 405.1140), unless specifically excepted the term, "party," includes CMS where CMS has entered into a case as a party according to § 405.1012. The term, "appellant," does not include CMS, where CMS has entered into a case as a party according to § 405.1012.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37704, June 30, 2005; 74 FR 65336, Dec. 9, 2009]

42 CFR Ch. IV (10–1–10 Edition)

§ 405.1104 Request for MAC review when an ALJ does not issue a decision timely.

(a) *Requesting escalation.* An appellant who files a timely request for hearing before an ALJ and whose appeal continues to be pending before the ALJ at the end of the applicable ALJ adjudication period under § 405.1016 may request MAC review if—

(1) The appellant files a written request with the ALJ to escalate the appeal to the MAC after the adjudication period has expired; and

(2) The ALJ does not issue a decision, dismissal order, or remand order within the later of 5 calendar days of receiving the request for escalation or 5 calendar days from the end of the applicable adjudication period set forth in § 405.1016.

(b) *Escalation.* (1) If the ALJ is not able to issue a decision, dismissal order, or remand order within the time period set forth in paragraph (a)(2) of this section, he or she sends notice to the appellant.

(2) The notice acknowledges receipt of the request for escalation, and confirms that the ALJ is not able to issue a decision, dismissal order, or remand order within the statutory timeframe.

(3) If the ALJ does not act on a request for escalation within the time period set forth in paragraph (a)(2) of this section or does not send the required notice to the appellant, the QIC decision becomes the decision that is subject to MAC review consistent with § 405.1102(a).

(c) *No escalation.* If the ALJ's adjudication period set forth in § 405.1016 expires, the case remains with the ALJ until a decision, dismissal order, or remand order is issued or the appellant requests escalation to the MAC.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37704, June 30, 2005; 74 FR 65337, Dec. 9, 2009]

§ 405.1106 Where a request for review or escalation may be filed.

(a) When a request for a MAC review is filed after an ALJ has issued a decision or dismissal, the request for review must be filed with the entity specified in the notice of the ALJ's action. The appellant must also send a copy of

the request for review to the other parties to the ALJ decision or dismissal who received a copy of the hearing decision under § 405.1046(a) or a copy of the notice of dismissal under § 405.1052(b). Failure to copy the other parties tolls the MAC's adjudication deadline set forth in § 405.1100 until all parties to the hearing receive notice of the request for MAC review. If the request for review is timely filed with an entity other than the entity specified in the notice of the ALJ's action, the MAC's adjudication period to conduct a review begins on the date the request for review is received by the entity specified in the notice of the ALJ's action. Upon receipt of a request for review from an entity other than the entity specified in the notice of the ALJ's action, the MAC sends written notice to the appellant of the date of receipt of the request and commencement of the adjudication timeframe.

(b) If an appellant files a request to escalate an appeal to the MAC level because the ALJ has not completed his or her action on the request for hearing within the adjudication deadline under § 405.1016, the request for escalation must be filed with both the ALJ and the MAC. The appellant must also send a copy of the request for escalation to the other parties. Failure to copy the other parties tolls the MAC's adjudication deadline set forth in § 405.1100 until all parties to the hearing receive notice of the request for MAC review. In a case that has been escalated from the ALJ, the MAC's 180 calendar day period to issue a final decision, dismissal order, or remand order begins on the date the request for escalation is received by the MAC.

[74 FR 65337, Dec. 9, 2009]

§ 405.1108 MAC actions when request for review or escalation is filed.

(a) Except as specified in paragraphs (c) and (d) of this section, when a party requests that the MAC review an ALJ's decision, the MAC will review the ALJ's decision *de novo*. The party requesting review does not have a right to a hearing before the MAC. The MAC will consider all of the evidence in the administrative record. Upon completion of its review, the MAC may adopt, modify, or reverse the ALJ's decision

or remand the case to an ALJ for further proceedings.

(b) When a party requests that the MAC review an ALJ's dismissal, the MAC may deny review or vacate the dismissal and remand the case to the ALJ for further proceedings.

(c) The MAC will dismiss a request for review when the party requesting review does not have a right to a review by the MAC, or will dismiss the request for a hearing for any reason that the ALJ could have dismissed the request for hearing.

(d) When an appellant requests escalation of a case from the ALJ level to the MAC, the MAC may take any of the following actions:

(1) Issue a decision based on the record constructed at the QIC and any additional evidence, including oral testimony, entered in the record by the ALJ before the case was escalated.

(2) Conduct any additional proceedings, including a hearing, that the MAC determines are necessary to issue a decision.

(3) Remand the case to an ALJ for further proceedings, including a hearing.

(4) Dismiss the request for MAC review because the appellant does not have the right to escalate the appeal.

(5) Dismiss the request for a hearing for any reason that the ALJ could have dismissed the request.

§ 405.1110 MAC reviews on its own motion.

(a) *General rule.* The MAC may decide on its own motion to review a decision 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 calendar 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