

**§ 405.1869**

- (1) Investigates the allegation; and
- (2) May take remedial action when it determines that it is appropriate to do so, against the party or the representative (such as prohibiting the representative from appearing before it, excluding such information from the record, or if the overall fairness of the hearing has been compromised, dismissing the case).

[73 FR 30260, May 23, 2008; 73 FR 49356, Aug. 21, 2008]

**§ 405.1869 Scope of Board's authority in a hearing decision.**

(a) If the Board has jurisdiction to conduct a hearing on a specific matter at issue under section 1878(a) or (b) of the Act and § 405.1840 of this subpart, and the legal authority to fully resolve the matter in a hearing decision (as described in §§ 405.1842(f), 405.1867, and 405.1871 of this subpart), section 1878 of the Act, and paragraph (a) of this section give the Board the power to affirm, modify, or reverse the intermediary's findings on each specific matter at issue in the intermediary determination for the cost reporting period under appeal, and to make additional revisions on specific matters regardless of whether the intermediary considered the matters in issuing the intermediary determination. The Board's power to make additional revisions in a hearing decision does not authorize the Board to consider or decide a specific matter at issue for which it lacks jurisdiction (as described in § 405.1840(b) of this subpart) or which was not timely raised in the provider's hearing request. The Board's power under section 1878(d) of the Act and paragraph (a) of this section to make additional revisions is limited to those revisions necessary to resolve fully a specific matter at issue if—

- (1) The Board has jurisdiction to grant a hearing on the specific matter at issue under section 1878(a) or (b) of the Act and § 405.1840 of this subpart; and
- (2) The specific matter at issue was timely raised in an initial request for a Board hearing filed in accordance with § 405.1835 or § 405.1837 of this subpart, as applicable, or in a timely request to add issues to a single provider appeal

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submitted in accordance with § 405.1835(c) of this subpart.

(b)(1) If the Board has jurisdiction to conduct a hearing on a specific matter at issue solely under §§ 405.1840 and 405.1835 or § 405.1837 of this subpart, as applicable, and the legal authority to fully resolve the matter in a hearing decision (as described in §§ 405.1842(f), 405.1867, and 405.1871 of this subpart), the Board is authorized to do the following:

- (i) Affirm, modify, or reverse the intermediary's or Secretary's findings on each specific matter at issue in the intermediary or Secretary determination under appeal.

- (ii) Make additional revisions on each specific matter at issue regardless of whether the intermediary considered these revisions in issuing the intermediary determination under appeal, provided the Board does not consider or decide a specific matter for which it lacks jurisdiction (as described in § 405.1840(b) of this subpart) or that was not timely raised in the provider's hearing request.

(2) The Board's authority under this section to make the additional revisions is limited to those revisions necessary to resolve a specific matter at issue.

[73 FR 30261, May 23, 2008]

**§ 405.1871 Board hearing decision.**

(a)(1) If the Board finds jurisdiction over a specific matter at issue and conducts a hearing on the matter (as described in §§ 405.1840(a) and 405.1845(e) of this subpart), the Board must issue a hearing decision deciding the merits of the specific matter at issue.

(2) A Board hearing decision must be in writing and based on the admissible evidence from the Board hearing and other admissible evidence and written argument or comments as may be included in the record and accepted by the Board (as described in §§ 405.1845(g) and 405.1865 of this subpart).

(3) The decision must include findings of fact and conclusions of law regarding the Board's jurisdiction over each specific matter at issue (see § 405.1840(c)(1)), and whether the provider carried its burden of production of evidence and burden of proof by establishing, by a preponderance of the