

mailed to the parties, unless such notice is waived, at their last known addresses, and the parties shall be given a reasonable opportunity to comment thereon and to present evidence which is relevant and material to such issues.

(d) *Copies of evidence.* When additional evidence is presented to a presiding officer or to the Appeals Council, a transcript or a condensed statement of such evidence shall be made available to any party upon request, upon payment of the cost, or if such cost is not readily determinable, the estimated amount thereof, unless, for good cause shown, such payment is waived.

[41 FR 53790, Dec. 9, 1976]

§410.665 Decision by Appeals Council or remanding of case.

(a) *General.* If a case is certified to the Appeals Council by an Administrative Law Judge (see §410.654), the Appeals Council shall make a decision. If the Appeals Council decides to review an Administrative Law Judge's decision as provided in §410.662, the Appeals Council may, upon such review, affirm, modify, or reverse the decision of the Administrative Law Judge, or vacate such decision and remand the case to an Administrative Law Judge either for rehearing and the issuance of a decision thereon or to take further testimony in the case and return it to the Appeals Council with a recommended decision for decision by the Appeals Council. Where a case has been remanded by a court for further consideration, the Appeals Council may proceed then to make the decision or it may in turn remand the case to an Administrative Law Judge with directions to return the case upon completion of the necessary action to the Appeals Council with a recommended decision for decision by the Appeals Council.

(b) *Case remanded to an Administrative Law Judge.* Where a case is remanded to an Administrative Law Judge, he shall initiate such additional proceedings and take such other action (under §§410.632 through 410.655) as is directed by the Appeals Council in its order of remand. The Administrative Law Judge may take any additional action not inconsistent with the order of re-

mand. Upon completion of all action called for by the order of remand and any other action initiated by the Administrative Law Judge, the Administrative Law Judge shall promptly (1) issue a decision in writing which contains findings of fact and a statement of reasons, or (2) when so directed by the Appeals Council, return the case with his recommended decision to the Appeals Council for its decision. A copy of the decision shall be mailed to each party at his last known address. When a recommended decision is issued, the Administrative Law Judge shall also notify each party of his right to file with the Appeals Council within 10 days from the date of mailing of the recommended decision, briefs or other written statements of exceptions and allegations as to applicable fact and law, except in the case of suspension or disqualification (see §410.694(b)). Upon request of any party made within such 10-day period, a 10-day extension of time for filing such briefs or statements shall be granted and, upon a showing of good cause, such 10-day period may be extended, as appropriate.

(c) *Decision by Appeals Council.* A decision of the Appeals Council shall be based upon the evidence received into the hearing record and such further evidence as the Appeals Council may receive as provided in §§410.657, 410.658, 410.663, and 410.664. This decision shall be made in writing and contain findings of fact, and a statement of reasons. A copy of the decision shall be mailed to each party at his last known address.

§410.666 Effect of Appeals Council's decision or refusal to review.

The Appeals Council may deny a party's request for review or it may grant review and either affirm or reverse the Administrative Law Judge's decision. The decision of the Appeals Council, or the decision of the Administrative Law Judge where the request for review of such decision is denied (see §410.662), shall be final and binding upon all parties to the hearing unless a civil action is filed in a district court of the United States under the provisions of section 205(g) of the Social Security Act, as incorporated by section 413(b) of the Act (see §410.670a), or unless the decision is

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revised under the provisions described in § 410.671.

[37 FR 20653, Sept. 30, 1972]

§ 410.667 Dismissal by Appeals Council.

The Appeals Council may dismiss a request for review or proceedings before it under any of the following circumstances:

(a) *Upon request of party.* Proceedings pending before the Appeals Council may, with the approval of the Appeals Council, be discontinued and dismissed upon written application of the party or parties who filed the request for review to withdraw such request.

(b) *Death of party.* Proceedings before the Appeals Council, whether on request for review or review on the motion of the Appeals Council, may be dismissed upon the death of a party only if the record affirmatively shows that there is no prejudiced individual who wishes to continue the action.

(c) *Request for review not timely filed.* A request for review of a decision by an Administrative Law Judge shall be dismissed where the party has failed to file a request for review within the time specified in § 410.661 and the time for filing such request has not been extended as provided in § 410.669.

§ 410.668 Extension of time to request reconsideration.

If a party to an initial determination desires to file a request for reconsideration after the time for filing such request has passed (see § 410.624), such party may file a petition with the Administration for an extension of time for the filing of such request. Such petition shall be in writing and shall state the reasons why the request for reconsideration was not filed within the required time. For good cause shown, the component of the Administration which has jurisdiction over the proceedings (see § 410.601) may extend the time for filing the request for reconsideration.

§ 410.669 Extension of time to request hearing or review or begin civil action.

(a) *General.* Any party to a reconsidered determination, a decision of an Administrative Law Judge (formerly

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called *hearing examiner*), or a decision of the Appeals Council (resulting from an initial determination as described in § 410.610), may petition for an extension of time for filing a request for hearing or review or for commencing a civil action in a district court of the United States, although the time for filing such request or commencing such action (see §§ 410.631 and 410.661 and section 205(g) of the Social Security Act as incorporated by section 413(b) of the Act), has passed. If an extension of the time fixed by § 410.631 for requesting a hearing before an Administrative Law Judge is sought, the petition may be filed with an Administrative Law Judge. In any other case, the petition shall be filed with the Appeals Council. The petition shall be in writing and shall state the reasons why the request or action was not filed within the required time. For good cause shown, an Administrative Law Judge or the Appeals Council, as the case may be, may extend the time for filing such request or action.

(b) *Where civil action commenced against wrong defendant.* If a party to a decision of the Appeals Council, or to a decision of the Administrative Law Judge where the request for review of such decision is denied (see § 410.662), timely commences a civil action in a district court as provided by section 205(g) of the Social Security Act as incorporated by section 413(b) of the Act, but names as defendant the United States or any agency, officer, or employee thereof instead of the Commissioner either by name or by official title, and causes process to be served in such action as required by the Federal Rules of Civil Procedure, the Administration shall mail notice to such party that he has named the incorrect defendant in such action; and the time within which such party may commence the civil action pursuant to section 205(g) of the Social Security Act against the Commissioner shall be deemed to be extended to and including the 60th day following the date of mailing of such notice.

[37 FR 20653, Sept. 30, 1972, as amended at 62 FR 38453, July 18, 1997]