

#### § 423.1064

party did not timely request reconsideration, hearing, or review, or commence a civil action with respect to that determination or decision.

(b) *No right to hearing.* The party requesting a hearing is not a proper party or does not otherwise have a right to a hearing.

(c) *Hearing request not timely filed.* The affected party did not file a hearing request timely and the time for filing has not been extended.

#### § 423.1064 Notice and effect of dismissal and right to request review.

(a) Notice of the ALJ's dismissal action is mailed to the parties. The notice advises the affected party of its right to request that the dismissal be vacated as provided in 423.1066.

(b) The dismissal of a request for hearing is binding unless it is vacated by the ALJ or the Departmental Appeals Board.

#### § 423.1066 Vacating a dismissal of request for hearing.

An ALJ may vacate any dismissal of a request for hearing if a party files a request to that effect within 60 calendar days from receipt of the notice of dismissal and shows good cause for vacating the dismissal.

#### § 423.1068 Administrative Law Judge's decision.

(a) *Timing, basis and content.* As soon as practical after the close of the hearing, the ALJ issues a written decision in the case. The decision is based on the evidence of record and contains separate numbered findings of fact and conclusions of law.

(b) *Notice and effect.* A copy of the decision is mailed to the parties and is binding on them unless—

(1) A party requests review by the Departmental Appeals Board within the time period specified in 423.1076, and the Board reviews the case;

(2) The Departmental Appeals Board denies the request for review and the party seeks judicial review by filing an action in a United States District Court or, in the case of a civil money penalty, in a United States Court of Appeals;

(3) The decision is revised by an ALJ or the Department Appeals Board; or

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(4) The decision is a recommended decision directed to the Board.

#### § 423.1070 Removal of hearing to Departmental Appeals Board.

(a) At any time before the ALJ receives oral testimony, the Board may remove to itself any pending request for a hearing.

(b) Notice of removal is mailed to each party.

(c) The Board conducts the hearing in accordance with the rules that apply to ALJ hearings under this subpart.

#### § 423.1072 Remand by the Administrative Law Judge.

(a) If CMS requests remand, and the affected party concurs in writing or on the record, the ALJ may remand any case properly before him or her to CMS for a determination satisfactory to the affected party.

(b) The ALJ may remand at any time before notice of hearing decision is mailed.

#### § 423.1074 Right to request Departmental Appeals Board review of Administrative Law Judge's decision or dismissal.

Either of the parties has a right to request Departmental Appeals Board review of the ALJ's decision or dismissal order, and the parties are so informed in the notice of the ALJ's action.

#### § 423.1076 Request for Departmental Appeals Board review.

(a) *Manner and time of filing.* (1) Any party that is dissatisfied with an ALJ's decision or dismissal of a hearing request, may file a written request for review by the Departmental Appeals Board.

(2) The requesting party or its representative or other authorized official must file the request with the DAB within 60 calendar days from receipt of the notice of decision or dismissal, unless the Board, for good cause shown by the requesting party, extends the time for filing.

(b) *Content of request for review.* A request for review of an ALJ decision or dismissal must specify the issues, the findings of fact or conclusions of law with which the party disagrees, and the